WOMBLE CARLYLE SANDRIDGE & RICE
A PROFESSIONAL LIMITED LIABILITY COMPANY

Seventh Floor
1401 Eye Street, N.W.
Washington, DC 20005

Telephone: (202) 467-6900
Fax: (202) 467-6910
Web site: www.wcsr.com

Gregg P. Skall
Direct Dial: (202) 857-4441
Direct Fax: (202) 261-0041
E-mail: gskall@wcsr.com

January 21, 2005

VIA COURIER

Supplement to
AOR 2004-43

Rosemary C. Smith
Associate General Counsel
Federal Election Commission
Washington, D.C. 20463

Re: Letter request of December 21, 2004 in connection with Draft AO 2004-43

Dear Ms. Smith:

This letter is in reply to yours of December 21, 2004 in which you request additional information concerning the working of advertising rates in the broadcasting industry, the mechanics of Lowest Unit Charge ("LUC") as defined in the Communications Act of 1934 and its implementation by the Federal Communications Commission (the "FCC"). You also request additional facts surrounding the Kit Bond/Nancy Farmer incident described in my letter request of October 12, 2004.

I will address each of your enumerated questions, and then the comments submitted on the day prior to the Federal Election Commission (the "Commission") meeting of December 16, 2004.

The Federal Election Commission Questions

1. *Describe in detail how broadcasters establish advertising rates for advertisers other than political candidates. Provide details regarding different classes of advertising, including classes of preemptible and non-preemptible time.*

A comprehensive guide to broadcast advertising rate structures would be difficult to provide in a reasonable space; however, I will try to provide a concise answer to your question. Also, as an additional aid, I have attached to this letter as Attachment A a copy of our ***Political Broadcast Manual***, which describes some of the selling practices of broadcasters, and to which I will refer in a couple of instances. First, it is important to recognize that it is a popular misnomer that broadcasters publish a rate card from which they charge all advertisers. In fact, broadcasters charge advertisers in many different ways and according to many different features of the time purchased. However, generally, broadcasters do tend to classify the type of advertising spots they sell as preemptible, preemptible with notice, or non-preemptible. Another set of classifications include whether the spot is sold for fixed position, within a time category, Run-of-Schedule ("ROS") or on weekly or some other category of rotation. A time category depends on

individual broadcaster choice and whether it is radio or television. For example, radio often, but not always, has time classes of morning drive, midday, afternoon, evening drive, evening and overnight. They may have a special class of time for special programs, such as sporting events or radio dramas. Television generally, but not always, classifies its time as Morning, Afternoon, Prime-time, nighttime, inside the news and news adjacencies and by specific program. Some of these classes were described by the FCC in its 1991 Codification of Programming Policies[1] where the Commission recognized that, under the latest developments in the sale of broadcast time, ". . . spots are in essence auctioned to the highest bidder and the price of a given class of time changes constantly to respond to fluctuating supply and demand."[2] An example of how they might be sold can be found at pages 35 and 36 of the Womble Carlyle ***Political Broadcast Manual*** showing 75 blocks of time classes, of which 49 might have separate prices associated with them. One principle is clear, however -- the broadcaster must always treat the legally qualified candidate entitled to LUC the same as their most favored commercial advertisers during the LUC periods[3] and thereby political advertisers are always guaranteed the most favorable rates available on any particular station.

Importantly, the Womble Carlyle ***Political Broadcast Manual***, at page 13, describes the FCC interpretation of Section 315 requirements for advertising charges *outside* the political windows. Essentially, the FCC requires that each station is obligated to charge a political candidate no more than what it would charge a commercial advertiser for comparable time. Political advertisers must not be charged more than anyone else for the same frequency, class, and amount of time in the same period. In the examples we provide, it is important to note that ROS or preemptible political spots must be scheduled in the same manner as commercial ROS's or preemptibles to be entitled to the comparable rate and neither BCRA or Section 315 guarantee candidates non-preemptible time for either comparable time or LUC. If candidate A's ROS spots happen to all run in prime-time (through no manipulation or other favoritism by the station), then B would still assume the risk that his would not if he, too, bought an ROS package; to be assured of non-preemptible, prime-time exposure, B would have to buy fixed prime-time spots (and pay the higher rate). Also, in determining comparable charges, the rates actually charged to commercial advertisers must be used, even if they are discounted from the station's rate guide.

Essentially, the FCC rules permit stations to establish and define their own reasonable classes of immediately preemptible time. These separate classifications, however, may not be based solely on price or the identity of the advertiser. There must be some demonstrable benefit to the advertiser as well as a different obligation upon the station in each classification of time, such as varying levels of preemption protection, scheduling flexibility or make good benefits. There can only be a single class of preemptible time, however, where a station sells by auction so that ***any*** spot can be preempted by an advertiser who offers a higher price. By way of contrast, a

---

[1] ***Codification of the Commission's Political Programming Policies*** Report and Order in MM Docket No. 91-168, Released December 23, 1991, 70 RR 2d 239 7 FCC Rcd 678 1991 FCC LEXIS 6783, at ¶¶ 64 et. seq. See Also: ***Codification of the Commission's Political Programming Policies*** Memorandum and Order in MM Docket No. 91-168, Released June 11, 1992, 70 RR 2d 1331 7 FCC Rcd 4611 1992 FCC LEXIS 3226

[2] ***Codification*** Report and Order, (*supra*) at ¶ 70

[3] 47 CFR §73.1942(a)(1)(i)

station may establish separate classes of immediately preemptible time, if there are legitimate differences in the nature of the preemption and the station discloses those differences along with the specific price (or limited price ranges) and the estimated probability that a spot of each category and price level will run. Each classification of time must be disclosed to all candidates and each may bear a different LUC. The FCC, concerned that there might be some abuse, permits candidates to file complaints challenging classifications viewed as manipulative or discriminatory.[4]

2. *Describe in detail how broadcasters calculate LUC offered to political candidates. Also, provide details regarding how members of MBA calculated and applied LUC in establishing a rate to charge Missourians for Kit Bond for advertisements during the 2004 general election.*

The calculation of LUC to be offered to candidates is prescribed by Section 315(b) of the Communications Act of 1934 and the FCC rules implementing it.[5] It is the lowest charge made to any advertiser for one amount (or unit) of time, in the same class of time in the same period.[6] The FCC staff has interpreted the same period to be roughly within a week of the time that the political ad runs within the LUC window.[7] Thus, the LUC would be the lowest price paid by any advertiser for any one spot in the same class of time ". . . during a given period in the relevant week, including those commercial advertisers or other political candidates whose spots appeared in the relevant week but who may have contracts that are in effect over the course of . . ." a longer period of time and which may be discounted for large quantity purchases.[8]

To the best of our knowledge, those Missouri broadcasters who continued to charge LUC to Missourians for Kit Bond throughout the LUC period calculated the LUC in accordance with the principles of the preceding paragraph.

3. *State whether there are any circumstances under which a member of MBA could offer the LUC to a Federal candidate, absent being required to do so under the Communications Act. Describe all such circumstances.*

There is nothing in the Communications Act or the FCC regulations that set a floor for broadcaster charges to political candidates. Section 315 sets a LUC price *ceiling* during the 45 and 60-day periods preceding primary and general elections, but there is nowhere to be found in the law a price *below which* a broadcaster may not go for a political advertiser. Indeed, broadcasters are frequently exhorted to offer time to political candidates for free, and many often do! The single limitation on such charges is that all candidates for the *same* political office must be treated equally. The Equal Opportunities Doctrine of Section 315(a) of the Communications Act of 1934 requires that ". . . a licensee must treat all legally qualified candidates for the same office alike. It may make no discrimination in charges, practices, regulations, facilities or

---

[4] ***Political Broadcast Manual*** at p. 14

[5] See: 47 CFR §73.1942 Candidate rates, Appended as Attachment B

[6] 47 CFR §73.1942(a)(1)

[7] See, for example, ***Codification*** Report and Order, (*supra*) at ¶ 85

[8] Ibid

services . . . rendered . . . to any candidate for public office . . ."[9] Thus, a broadcaster cannot charge LUC or lower to a candidate for a particular public office and not offer the same charge to that candidate's opponents for the *same* office.

4. *Provide a copy of the Missourians for Kit Bond radio and television advertisements referenced in your advisory opinion request.*

Copies of the requested advertisements are attached in the form of a DVD video and a MP3 file on CD media.

Comments of Democracy 21, Campaign Legal Center and the Center for Responsive Politics

On the day prior to the FEC meeting to consider the MBA Advisory Opinion request, three public interest groups, Democracy 21, Campaign Legal Center and Center for Responsive Politics (together, the "Campaign Reform Groups" or "CRGs") filed comments on the draft OA. Although Democracy 21 was represented by legal counsel, Donald J. Simon, Esq., the subject comments were not only submitted on the last day prior to the meeting, but a copy was not served on the MBA or the undersigned. Accordingly, there was no time afforded to provide a response to the arguments advanced in those comments. To the extent that any of their remarks are considered relevant to the consideration of the MBA requested OA, we would like to submit our reply at this time.

The CRGs argue that Congress intended to make LUC available "*only* to those candidates who include the required disclaimer statements in their ads." Essentially, they argue that this means that candidates who do not include the precise disclaimer may not be *allowed* LUC, when they are not entitled to demand it. We do not believe that is a correct reading of the Bipartisan Campaign Reform Act of 2002 (BCRA) changes to Section 315(b) of the Communications Act of 1934. BCRA *did not* provide that the benefit of Lowest Unit Charge may not be made available to a candidate who makes a wrong disclaimer. As the CRGs *correctly* state, BCRA states *only* that the candidate "*shall not be entitled*" to receive the LUC. The statutory language is clearly and unambiguously permissive respecting broadcasters, not mandatory. The *Plain Meaning Rule* of statutory construction – if the meaning of a legislative text is plain, the court may not interpret it but must simply apply it as written – requires that permissive application of BCRA. Under this principle, the courts and administrative agencies may resort to the rules and techniques of interpretation only if the text is ambiguous, and it is not ambiguous here.

Congress easily could have prohibited broadcasters from accepting advertising from a noncomplying candidate at LUC, or any other amount, had it so stated in the legislation. This, it did not do. Indeed, Congress, or at least some of those Members voting for BCRA, may have intended to withdraw the ability of a broadcaster to charge LUC to such a candidate, but the plain meaning of the language in BCRA merely withdraws the *entitlement* of such a candidate to *compel* a broadcaster to provide LUC. It may be that Congress "assumed" that broadcasters

[9] 47 CFR §73.1941(e)

would want to raise rates on an already sold LUC ad package, even though they may not know whether they had the right to do so until after the ad has run. What Congress did not account for is the additional and costly financial and administrative burden imposed by BCRA on broadcasters who may well prefer a business decision to just leave the ad buy stand. Others may consider it unfair to raise LUC where a candidate made a good faith attempt to make the disclaimer, but failed to comply with all the precise technicalities. That is not so hard to do. For example, even the CRGs misstate the requirements of BCRA for a radio disclaimer, which requires that in addition to "identifying himself or herself and state that he or she 'approved' the ad, for television and radio broadcasts," as the CRGs state, a radio disclaimer must also have the candidate state the office he or she is seeking.[10] Indeed, that happens to be the only infirmity in the Kit Bond radio ad. Clearly, if Congress meant to do what the CRG comments suppose, they could have said so. The unfortunate fact is that there is **NO** enforcement mechanism built into the law, and the FEC should not be persuaded to construct after the fact what Congress did not provide or overlooked. None of the quoted legislative history rebuts this fact. All of the statements allude to what a candidate must do to be able to "*get . . . if he wants*" LUC. The language is only "mandatory" for the candidate who wishes to compel LUC.

Moreover, it is important to understand that the CRGs reading of the statute amounts to deputizing the broadcaster as the law enforcer. It requires the broadcaster to become the judge and jury of the sufficiency of the "disclaimer" statement, with the consequence, were the CRGs position to prevail, that there could be a penalty to the broadcaster if they guess wrong. That amounts to ***conscription!*** Broadcasters were never consulted whether they were willing or equipped to accept this role, which places them at business risk with commercial advertising representatives that broadcasters deal with everyday. Nothing in the legislative history supports this imposition. The CRGs argue against the plain meaning and historical definition of the word "privilege." They would **require** broadcasters to exercise this judgment when in truth it merely gives them the power but not the mandate to suspend LUC. This is as it should be.

Generally, when government exercises power over individuals, the doctrine of sovereign immunity protects officials who exercise their good faith judgment.[11] When Congress has imposed requirements on broadcasters, they have also been provided with protection from consequences. For example, Section 312(a)(7) requires broadcasters to accept broadcast advertisements from legally qualified candidates for federal office and Section 315(a) prohibits them from censoring the content of those ads as well as the ads of local legally qualified candidates for public office. The courts have held that broadcasters who cannot control the advertising content cannot be held accountable or liable for defamation or other torts committed in those ads.[12]

Similarly, where broadcasters are impressed with the governmental function of regulating the content of the "stand-by-your-ad" disclaimer and imposing a penalty for failure to perform, no matter how gross or slight the infraction, they should not thereby incur the liability of a

---

[10] 47 USC § 315(b)(2)(D)

[11] ***Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*** 467 U.S. 837, 81 L. Ed. 2d 694, 104 S. Ct. 2778 (1984)

[12] ***Farmers Educational And Cooperative Union Of America v. WDAY, INC.***, 360 U.S. 525, 79 S.Ct. 1302 (1959)

potential illegal campaign contribution. Otherwise, broadcasters should rightfully decline the responsibility altogether. This is all the more imperative when one realizes the ambiguous and contradictory nature of the BCRA standards.

For example, Section 315(b)(2)(C) of the Communications Act[13] requires that television broadcasts by a candidate have a clearly identifiable photo or image at the end of the broadcasts and a simultaneous printed disclaimer statement that the candidate approved the broadcast for a period of four seconds. For radio broadcasts however, Section 315(b)(2)(D) requires that the candidate make the audio statement and that in addition to the television statement contents, the candidate state the office being sought.

Section 441d.(d)(1) of the Federal Election Campaign Act[14], however, requires that in the radio statement the candidate be identified and that the candidate has approved the communication, but has no requirement for a statement of the office being sought. Section 441d.(d)(1) of the Federal Election Campaign Act[15] requires that the television disclaimer, in this case, be the same text as in the radio ad, but the video must be an "unobscured, full-screen view" of the candidate making the statement, or a clearly identifiable statement with a audio statement by the candidate, rather than the printed statement required by the communications act. The Federal Election Commission Regulations provide that a candidate is considered "clearly identified" if the image is eighty percent (80%) of the vertical screen height."[16] The CRGs (and the Nancy Farmer campaign) would have the local broadcaster make the judgment whether a particular ad complied with the Communications Act AND the Federal Election Act, with the consequence of making the wrong decision being civil or criminal liability for an illegal campaign contribution. The Nancy Farmer situation provides an example of the difficult and unfair position in which this interpretation would place a broadcaster. The image that formed the basis of the Farmer Campaign complaint is appended as Attachment C. We are still not sure whether Farmer is right or whether this image satisfies the FCC requirements, the FEC requirements or none at all. Is it an "unobscured, full-screen view" that is 80% of the vertical screen height, or 80% of the screen, as was complained about, or sufficiently "clearly identifiable" for the Communications Act?

Consider this: in the Missouri Senate race, Missouri radio and television broadcasters were threatened by the Nancy Farmer campaign that they would be liable for making illegal campaign contributions. The allegation was that in the radio commercial, Kit Bond did not identify the office he sought. In the TV commercial, the complaint was that the image was not sufficiently large (80% of "the screen"). It appears that the radio commercial complied with the Federal Election Campaign Act, but not the BCRA amendments to §315 of the Communications Act. The television ad complied with the Communications Act, but not necessarily with §441 of the Federal Election Campaign Act. In fact, the Kit Bond campaign submitted BCRA certifications that the spots complied with the law.[17] There is no legal guidance for the

[13] 47 USC §315(b)(2)(C)
[14] 2 USC §441d.(d)(1)
[15] 2 USC §441d.(d)(2)
[16] 11 CFR §110.11(c)(3)(ii)(b)
[17] See examples, submitted herewith as Attachment D

broadcaster which law controls and whether it is making a campaign contribution if it does not require a higher rate than LUC. Clearly, the CRGs are mistaken when they claim the BCRA amendments provide "clear and mandatory" language in support of their position.

If indeed, it is the broadcaster's call whether the disclaimer complies and is required by the law to make such judgments, it cannot and should not be liable for the decision. We make no judgment whether it is the FCC, the FEC, or both, that is charged by Congress to determine whether the disclaimers comply with the Communications Act. In fact, that is not clear from the statute. However, clearly whether the broadcast of such advertisements constitute an illegal campaign contribution, is the sole province of the FEC. In making that determination, the FEC should recognize that it is the candidate who has to certify the advertisements compliance with BCRA and the fact that this certification is to be presented to the broadcaster indicates that *Congress intended that the broadcaster may rely on the certification.*

If there is a punishment to be meted out for improper stand-by-your-ad disclaimers, it is the candidate, not the broadcaster, who should be punished. It this last campaign, the broadcaster, in the face of a permissive act, chose not to punish for innocent mistakes. It is the FEC's charge to make sure that this is properly determined. Otherwise, the requirement to pre-screen everything they receive from candidates truly could preempt broadcasters from their important daily need to serve their local communities and run a stressful and time-crucial business. In deference to this factor, §315 (a) recognizes that broadcasters are not required to prescreen for correct sponsorship identification. Indeed, the heat of political battle frequently results in political ads being shot in a few days for airing within time to respond to an opponent's most recent charge. The process simply does not permit time for a broadcaster to pre-screen and exercise judgment about a spot, or engage in debate with the candidate representative before a new spot must air. Regardless of whether the advertisements comply with either law, in the face of such pressure and confusion, and considering the judge and jury role entrusted to the broadcaster, *the FEC must declare that Missouri broadcasters have not made illegal contributions and are not faced with the "Hobson's Choice" of being required to re-bill the candidate or declare the contribution.*

Moreover, if broadcasters were entrusted with the discretion of a judge and jury, then they should also be considered to be entrusted with the discretion to recognize that the 2004 election was the first major federal election for which these new BCRA requirements were in place and that few principles of guidance were available. Without official guidance, broadcasters were entitled to an adjustment period of their own and entitled to provide candidates with an adjustment period as well, particularly in the face of confusing and conflicting amendments to a law they had previously understood well.

Indeed, MBA agrees with the your statement of the FCC interpretation, and that proposed in the General Counsel's draft OA, that the only thing *broadcasters* are compelled to do is to treat all candidates alike under Section 315(a) of the Communications Act of 1934. Thus, it would be impermissible for a broadcaster to treat one candidate for the same office inconsistently or discriminatorily when compared to the opposing candidate. The General Counsel has it right

when saying that it is acceptable for a malfeasant candidate to receive LUC so long as all other candidates for the same office are treated the same.

Moreover, it is critical to remember that the FCC need not act to adopt rules interpreting the BCRA Communications Act amendments in order for the FEC to declare that no illegal campaign contribution would be made if the broadcasters do not rebill the Bond campaign for a price higher than LUC. It is clear that LUC as required by §315 and the FCC rules sets only a cap and not a floor. There is nothing in the law as currently constituted that *requires* a higher rate to a noncomplying candidate. For that matter, there is nothing in the law that prevents a broadcaster from offering free time to candidates, regardless of their disclaimers. Therefore, the only question remaining is whether the FEC considers it illegal under the campaign laws to provide LUC, or lower, to a noncomplying candidate, and therefore, they must either rebill the campaign for a higher rate or declare the difference to be a campaign contribution. The FCC need not act for the FEC to make that judgment and provide that guidance. The FEC must take the state of the law as it is and exercise its own jurisdiction and responsibility to provide definition to what does not constitute an illegal campaign contribution.

Were it otherwise, Missouri Broadcasters are in a quandary as to what is the correct charge for a noncomplying candidate. There is no guidance for this measure in BCRA. Indeed, if the FEC were to agree with the CRGs, then it is must accept the additional task of defining for broadcasters what the correct charge is for a noncomplying candidate and whether such a charge applies even to candidates who make a good faith effort to provide a proper "stand-by-your-ad" disclaimer, but make an innocent mistake such as failing to state the office they are running for in the radio ad. (There is nothing in the legislative history or the statute to explain the differing requirement.) Is the correct rate the "market" rate, the comparable rate or LUC plus some percentage? Given the way broadcast advertising is often sold at constant "auction" conditions, what is market rate? Is a broadcaster to be liable if they raise the rate, but raise it too little? Is LUC plus one dollar sufficient? If one candidate for an office has failed to properly articulate the stand-by-your-ad disclaimer and a broadcaster wishes to air a debate between the two, must the broadcaster charge that candidate a price higher than LUC to allow his participation while permitting the other candidate to appear without charge? Most importantly, are these judgments that Congress really intended for the broadcaster to make?

On behalf of the Missouri Broadcasters Association and its members, we hope that the forgoing satisfactorily answers the questions you have presented and the issues raised by the CRGs comments. We stand ready to supply additional information if requested or should the FEC believe it requires the answers to more questions. We would also be happy to appear before the FEC to respond to any last minute inquiries, but do request that the draft OA 2004-43 be adopted as presented on December 26, 2004.

Sincerely,

Gregg P. Skall
Counsel to the Missouri Broadcasters Association

Cc: Robert Baker, Esq. Federal Communications Commission
Donald J. Simon, Esq. Counsel to Democracy 21, Campaign Legal Center and Center for Responsive Politics

Attachment A

WOMBLE CARLYLE
OUR LAWYERS MEAN BUSINESS

Political Broadcast Manual

Produced by:
The Telecommunications Group of Womble Carlyle Sandridge & Rice, PLLC

1401 Eye Street, N.W.
Seventh Floor
Washington, D.C. 20005
(202) 467-6900
(202) 467-6910 (fax)
www.wcsr.com

Telecommunications Attorneys

Gregg P. Skall
(202) 857-4441
gskall@wcsr.com

John F. Garziglia
(202) 857-4455
jgarziglia@wcsr.com

Peter Gutmann
(202) 857-4532
pgutmann@wcsr.com

Vincent A Pepper
(202) 857-4560
vpepper@wcsr.com

Howard J. Barr
(202) 857-4506
hbarr@wcsr.com

Mark Palchick
(202) 857-4411
mpalchick@wcsr.com

Joan D. Stewart
(202) 857-4490
jstewart@wcsr.com

Political Rules in a Nutshell

(Click on the section number in parentheses to go to that section of this manual)

A broadcast licensee must provide to (II) **LEGALLY QUALIFIED** political candidates for federal office **(III) REASONABLE ACCESS**.

When any legally qualified candidate makes a **(IV) USE** of a broadcast facility during a **(V) NON EXEMPT PROGRAM**, then an opposing candidate is entitled to make a **(VI) REQUEST** for **(VII) EQUAL OPPORTUNITIES**.

Certain uses may qualify for the station's **(VIII) LOWEST UNIT CHARGE**.

A full **(IX) DISCLOSURE** of the station's selling practices must be made to all political advertisers.

All uses must be free from **(X) CENSORSHIP** and must bear the proper **(XI) SPONSORSHIP IDENTIFICATION**.

Documentation of each request for a use of the station's facilities, together with other relevant information, must be maintained in the station's **(XII) POLITICAL FILE** to which the public must have **(XIII) ACCESS**.

The **(XIV) FAIRNESS DOCTRINE** and the rules governing **(XV) POLITICAL EDITORIALS** and **(XVI) PERSONAL ATTACKS** have been repealed. Stations are still subject to rules regarding **(XVII) ISSUE ADVERTISING** and **(XVIII) NEWS DISTORTION**.

Table of Contents

Introduction

The FCC has regulated political broadcasting from the start. The original draft of the Communications Act of 1934 contained provisions to ensure fair and equitable treatment of candidates for public office and to assure the listening public of a full airing of campaign issues. Over the years, the Commission and the courts have expanded and reinforced these goals. Broadcasters, more concerned with pragmatic questions than abstract policy goals, have struggled with the Commission's increasingly complex rules regulating political advertising, which are fraught with ambiguity and complexity.

The Communications Act and the Commission's rules impose certain obligations on broadcasters and bestow certain rights on candidates. It is essential to determine what the obligations are and who is entitled to benefit from them. On the preceding page is an outline of the most fundamental principles. The political rules apply only to forms of broadcasting. This includes both analog and digital radio, television, cable and most direct broadcast satellite services. The political rules do not apply to ancillary services such as teletext, subscription television, and subsidiary sideband authorizations, which are generally intended as point-to-point communications of interest to a narrow band of subscribers. In addition, the FCC's political rules do not apply to newsletters, program guides and other non-broadcast activities of a broadcaster.

Noncommercial educational stations are not required to run political programming but may do so (on a free basis, of course). This choice applies to all candidates (including federal candidates who, as noted in Section III, are entitled to access on commercial stations). To the extent that a noncommercial educational station chooses to run political programming, then it is subject to the same rules regarding equal opportunities, censorship of uses, identification and record keeping as apply to commercial stations, as discussed herein.

II. "Legally Qualified" Candidates

There are separate sets of rules for federal and non-federal candidates. One set of rules governs candidates for President, Vice President and Congress, while another vastly different set of rules applies to candidates for state and local offices.

The first step is to determine whether the candidate seeking access is "legally qualified." Then a broadcaster must make the simpler decision of whether it is dealing with a state or federal candidate.

Only legally qualified candidates are entitled to access. Sometimes it may be quite apparent that a candidate is legally qualified. In other instances, the question may be close, particularly in the early stages of a campaign or when a "fringe" candidate is involved. Unless a federal candidate can demonstrate that he or she meets the requirements under the Communications Act and applicable local law, a licensee is under no obligation to provide access.

The Three Part Test

The Communications Act provides a three part test. It is up to the candidate, and not the broadcaster, to demonstrate that he or she satisfies each criterion.

Public Announcement

This requirement can be fulfilled through a public statement or by filing the necessary papers to qualify for a place on the ballot. However, if the candidate is simply expected to run, this is not in itself sufficient. Thus, an incumbent is not automatically a legally qualified candidate for re-election even though there may have been widespread speculation or even broad hints from the incumbent that he or she will run again. Incumbents are often very careful to avoid making any public announcement until the last moment in order to deny their opponents equal opportunities. As will be discussed below, newscasts and other types of news and public affairs programming are exempt from the equal opportunities requirement so there is no need to be concerned about restricting most of a station's own coverage of an incumbent's activities.

Local Legal Qualifications

The candidate must meet the age, residency and other requirements of applicable law to hold the office for which he or she is a candidate.

Bona Fide Candidate

The candidate must make a substantial showing that he or she is a bona fide candidate. This requirement can be satisfied in either of two ways. Any candidate who has qualified for a place on the ballot is considered bona fide. A write-in candidate may be considered bona fide by being otherwise qualified to hold the office sought and by making a substantial showing of genuine candidacy through engaging in activities commonly associated with political campaigning, such as making speeches, distributing literature, organizing a campaign committee and fund raising.

Exceptions

There are two overall exceptions to the above rules:

- With the exception of candidates for President and Vice President (or their delegates), candidates for nomination by convention or caucus will not be considered legally qualified until 90 days before the convention or caucus is to begin. Even then, they must meet the three-part test above.

- Candidates for President and Vice President (or their delegates) must either qualify or make a substantial showing of bona fide candidacy separately in each state in which broadcast rights are sought. However, when a Presidential or Vice Presidential candidate has qualified in at least 10 states (including D.C.) then he or she will be deemed qualified in all states. Note that this provision applies separately to candidacy for nomination and to candidacy for election. That is, a candidate for nomination to either office must qualify for the primary or Presidential preference ballot, and then the same candidate for election to that office must qualify separately for the general election ballot itself.

The candidate must make the substantial showing of a bona fide candidacy. This is one of the few areas of the political broadcasting rules in which the burden is on the candidate. Since such questions are a matter of local law, the prudent course in the event of uncertainty would be to obtain an opinion from the Attorney General or other state official who has authority to decide a candidate's legal qualifications. Unless subsequently overturned by a court, the state official's ruling will be followed by the FCC and can be relied upon by a station.

"Fringe" candidates present a potentially troublesome area. So long as an individual has met the three-part test outlined above, that person must be considered a legally qualified candidate even if he or she has no significant chance of winning and is doing little or no campaigning.

III. Reasonable Access

Once a candidate demonstrates his or her legal qualification, he or she must be accorded broadcast rights equal to all other legally qualified opponents, and, if a candidate for federal office, must be given reasonable access to a broadcast facility. This consideration does not apply to exempt news and public affairs programming.

Federal Candidates

The Communications Act states clearly that all federal candidates are to have "reasonable access" to broadcast facilities. The Communications Act authorizes the FCC to revoke a station license:

While the use of the word "reasonable" twice in the same sentence of this law might at first suggest a balance between candidate and licensee needs, the Supreme Court has interpreted the provision as requiring that a licensee accommodate all federal candidate requests unless there exists a realistic danger of substantial program disruption. Commission staff recently has taken a less extreme position, suggesting that candidates must negotiate their demands with broadcasters and that accommodations are especially appropriate for requests involving non-standard length or placement. Nonetheless, if a dispute remains, it is more likely that the Commission and the courts will favor the candidate rather than the licensee, reasoning that the candidate's needs to address the public are paramount.

The Commission has set out the following guidelines for determining whether a licensee's judgment in affording access was reasonable for legally qualified candidates for federal office:

- Reasonable access must be provided to legally qualified federal candidates at least during the 45 day period preceding a primary or runoff election and 60 days before a general election. Outside of these time periods, the Commission will determine the issue of reasonable access on a case-by-case basis. It is likely to be guided by a 1980 Supreme Court decision which held that stations must provide reasonable access to federal candidates if the request for time outside the 45 or 60 day period will not cause serious disruption.

- Except as noted below, a broadcaster must afford federal candidates all of the types, lengths and classes of program time that a candidate may request unless running the requested political program or advertisement would severely disrupt the station's schedule. Thus, a television station might be able to reject a request for a 10-minute political broadcast on the grounds that it could not fill the remaining 20 minutes of the half hour. Radio stations, however, could probably not make the same claim since most radio station programs normally are not limited to specific time lengths in the same manner as television programs.

- Stations may bar candidates from spot positions during newscasts, but must make access available to news adjacencies. This ban may extend to all news broadcasts, to only certain programs (i.e. the 6 p.m. but not the 11 p.m. news) or to only specified portions of a newscast (i.e. to the "hard news" segments but not to the sports or weather).

- Stations may refuse political advertising on the election day itself, but such a policy must apply to all federal candidates; that is, once any federal candidate is allowed to purchase advertising on election day, then all federal candidates must be afforded access as well.

- Commercial stations must sell spot announcements to legally qualified federal candidates during prime or drive time.

- If a commercial station chooses to donate time to legally qualified federal candidates rather than sell time, it must donate it on the same basis it sells time to non-political advertisers; that is, the same lengths, classes and time periods must be available. Once a station donates time to one legally qualified candidate, it must donate equivalent amounts of time to all opposing candidates. But there is no requirement that licensees make available time to federal candidates that is not made available to other advertisers.

When an access issue arises, the Commission confines its analysis to two questions:

(1) Whether the broadcaster followed the proper standards in deciding whether to grant a candidate's request for access and

(2) Whether the broadcaster's explanation of its decision is reasonable in terms of those standards.

In considering the first of these questions, the Commission follows the admonition of the Supreme Court that "...to justify a negative response, broadcasters must cite a realistic danger to substantial program disruption – perhaps caused by insufficient notice to allow adjustments in their schedule – or of an excessive number of equal time requests." Broadcasters may consider the following factors:

(1) How much time was previously sold to the candidate;

(2) The number of candidates in a particular race;

(3) The equal opportunities likely to be requested by opposing candidates and the probable timing of such requests;

(4) The potentially destructive impact on the station's regular programming.

Non-Federal Candidates

Licensees are not required to provide access to non-federal candidates. A licensee may be risking substantial ill will in the community, however, if it were to adopt a policy of excluding all non-federal candidates. Although there is no requirement to provide time to non-federal candidates, many civic leaders consider it fair and reasonable to do so. Moreover, the public tends to look to broadcasters for thorough and fair reporting of the candidates and the issues in the election.

Assuming that a licensee will want to provide some access for non-federal candidates, it may allocate time to those non-federal political races which it determines to be of greatest importance to its service area. Broadcast time for less important races can

be limited or even refused. Once a licensee decides to present the candidates for a given office, it generally also may:

- Limit time sales to a given pre-election period;
- Limit program or spot availability to certain amounts of day parts;
- Limit candidates to a specific format (such as one-minute spots or five-minute programs only); and
- Refuse to sell any time if it instead plans to give away free time.

Keep in mind that once the decision is made to provide airtime to candidates for any office, the rules discussed in the remaining sections of this manual will apply with full force, including the equal opportunity and lowest unit charge obligations.

Election Weekend Sales

During the 1990 election there was some confusion as to whether station personnel must be available to process orders for political time on the weekend before the election. The Commission clarified this requirement to state that if a station had taken an order from any commercial advertiser on a weekend even once during the previous year, then it must be available to sell time to political advertisers on the weekend before the election. The Commission further clarified that the services to be made available to the political advertiser need be no more extensive than the range of services that had been provided to any commercial advertiser. Thus, if access had been given to the commercial advertiser only to deliver or change copy, then only the same service need be afforded to candidates. If a station can prove that it has not sold time on weekends during the past year, it can justify a refusal to sell time to political candidates on the weekend before the election. However, a station has done this just once for a favored advertiser (such as for a store running a holiday promotion or a movie preparing to open), then it should be prepared to process political advertising requests on the weekend before an election.

IV. "Uses" of Broadcast Facilities

In 1994 the Commission reverted to its former definition of what constitutes "use" of a station's facilities. Any positive use of a candidate's voice or picture in a context not otherwise exempt constitutes a "use" and, thus entitles the user to lowest unit rates and triggers the "equal opportunities" provision of Section 315 of the Communications Act. Fleeting appearances and disparaging uses of the candidate's voice or picture by an opponent will not trigger Section 315 nor will any of the recognized exceptions in the statute, which include: (1) bona fide newscasts, (2) bona fide news interviews, (3) bona fide news documentaries and (4) on-the-spot coverage of bona fide news events (including political documentaries). These four categories will be discussed further in the next section.

The former requirement that limited a "use" to only a voluntary recognizable appearance controlled, sponsored or approved by the candidate was deleted in 1994. Congress occasionally considers election reform proposals which could restore the previous rule or impose other limitations upon qualification as a "use." Until then, an involuntary appearance, such as a use arranged by another party but not authorized by the candidate or the broadcast of a recording or film featuring the candidate without his or her authorization, would be considered a "use," so long as it is positive rather than disparaging.

The candidate's appearance on a spot must be identifiable to constitute a "use". The candidate's voice qualifies as aural identification and makes a spot in which it is clearly heard into a "use". Even if a candidate merely reads the sponsorship tag, his or her voice on the spot for this purpose brings the spot within the "use" definition if his or her voice is identifiable to a substantial segment of the community. (Any doubt can be avoided by requiring the candidate to identify himself or herself in the tag.) There is little guidance on the question of how long an appearance must be to be considered visually identifiable, although the Commission has considered spot appearances of two seconds in a photo montage and the inclusion of a candidate in a brief group shot of six people to be so quick as to elude identification.

Note, however, the following exceptions:

- Broadcasts by American political candidates on foreign stations received in the U.S. are not uses.
- Broadcasts by incumbents before public announcement of their candidacy for reelection are not uses (since the definition of a legally qualified candidate requires a public announcement or formal filing).

- Broadcasts by supporters of a legally qualified candidate are not uses, since only personal appearances by the candidate will qualify.

Otherwise, all positive appearances by legally qualified candidates on non-exempt programs during a campaign period are uses. It is immaterial whether or not a candidate discusses his or her candidacy during any appearance. To take some extreme examples:

- A candidate's appearance on a network variety show was a use.
- PSAs read by a candidate were uses.
- A minister's continued appearances on his church's regular Sunday program were deemed uses once he became a legally qualified candidate for public office.
- A judge's appearance as an expert on a panel of a public affairs discussion program was a use when the judge became a legally qualified candidate for reelection.
- Commercials regularly voiced by the sponsor's owner became uses upon announcement of his candidacy.

On Air Employees

Special concerns arise when an on-the-air employee decides to run for public office. All on-the-air appearances by station employees who have qualified as candidates become "uses" triggering equal opportunity responsibilities. When faced with an employee-candidate situation, one potential solution is to propose to each legally qualified opposing candidate a schedule of free spots or programs in lieu of the equal opportunities to which they would otherwise be entitled. Opposing candidates, however, have no obligation to grant waivers of their full equal opportunity rights, and absent such a voluntary agreement a use would be triggered by any employee remaining on the air. Thus, to avoid equal opportunity obligations, a station might be forced to require an employee-candidate to take a furlough from on-the-air activities for the duration of his or her campaign.

V. Exempt Programs

In 1959, the Communications Act was amended to exempt from the definition of a "use" appearances by legally qualified candidates on certain categories of programs. A candidate's appearance on an exempt program will not trigger "equal opportunity" rights by his or her opponents.

The four categories of exempt programs are:

- bona fide newscasts,
- bona fide news interviews,
- bona fide news documentaries, and
- on-the-spot coverage of bona fide news events.

The theory behind these exemptions is that the public benefit from political news and informational coverage is so great as to outweigh any risk of favoritism through a slight disparity of exposure. Blatant favoritism on an otherwise exempt program, of course, would defeat the purpose of the exemptions.

Bona Fide Newscasts and News Interviews

A bona fide newscast may be either a regularly scheduled newscast or a special newscast precipitated by a particular and sudden news event. In either case, the program is exempt if it involves a licensee's genuine effort to focus upon a newsworthy event, rather than an effort to advance a candidacy. An appearance by a legally qualified candidate in the course of a news program is not a use. There is an exception:

- When a candidate who is a station employee appears on-air as a newscaster, narrator, reporter or other talent in one of the other exempt categories of programs, the appearance is not exempt.

In determining whether a newscast or a news interview program is bona fide, the Commission considers the following:

- whether it is regularly scheduled outside the election period;
- how long it has been broadcast;
- whether decisions on the format, content and participants are based upon the licensee's reasonable, good faith journalistic judgment rather than on an intention to advance the candidacy of a particular person;
- whether the selection of persons to be interviewed and topics to be discussed is based on their newsworthiness;
- whether the normal format of the program is followed on the occasion in question; and
- whether the licensee's news coverage as a whole manifests any substantial indication of having given favoritism to a particular candidacy.

To illustrate, the Commission has ruled the following broadcasts to fall outside the newscast/news interview exception:

- A governor's interview program in which his staff selected questions to which answers were pre-recorded and subject to editing prior to broadcast, because the broadcaster did not fully control the program content.
- A one time program with an incumbent Congressman concerning his experiences in office, since the station had no regularly scheduled interview program, and did not demonstrate that it routinely ran special interview programs of this type.
- A regularly scheduled segment of a newscast featuring an interview of an incumbent district supervisor, because the moderator often failed to exercise sufficient control and allowed the supervisor to dominate the program and determine its overall direction.
- The use of material during a newscast which had been supplied to the station by a candidate, since the format and content of the segment was not sufficiently within the exclusive control of the licensee.

The Commission has tended to uphold a licensee's judgment as to whether a program segment that falls within the traditional criteria is a "bona fide news interview." Programs such as "Donahue" and the "Larry King Show," even though primarily oriented toward entertainment and variety rather than current issues and events, qualify under the exemptions, at least with respect to individual news interview segments that feature political candidates. The Commission has also found that appearances by legally qualified candidates on segments of shows with "specialty" formats such as "Entertainment Tonight," as well as shows with religious formats and recently, even the "Howard Stern Show," can qualify as exempt under the bona fide news interview exemption. Thus, individual segments of a variety or magazine type show can qualify as exempt interviews even though the show as a whole might not. Call-in programs and shows with live studio audience participants will also generally qualify if the host prepares audience questioners beforehand as to topics considered to be of primary newsworthiness and the host cuts off or rephrases noncompliant questions.

Independently produced news interview programs for which the Commission had previously issued a declaratory ruling as exempt may be presumed to continue to meet FCC requirements. As the Commission no longer provides such determinations in the absence of a candidate complaint, licensees are responsible for ensuring that the exemption standards are met and that each individual program is aired in the exercise of the licensee's good faith news judgment.

News Documentaries

The third exempt program category is the appearance of a candidate on a news documentary. The Commission considers a documentary to be a program that develops the background chronology leading to an event in order to place it in historical context. Most documentaries consist of non-fictionalized depictions of past events. The appearance of a candidate on such a program must be incidental to the presentation of the subject covered by the documentary and the program must in no way be designed to aid his or her candidacy. Therefore, a program consisting primarily of a studio discussion of a current event, or which deals predominately with a particular candidate or candidates of a particular party probably would not qualify as a bona fide news documentary and would trigger an equal opportunities obligation for all legally qualified opponents.

On-the-Spot Coverage of Bona Fide News Events

Determining what constitutes a "bona fide news event" is not always easy. For instance, the Commission has held that the appearance of a candidate during World Series pre-game ceremonies to present an award to former baseball player Jackie

Robinson was a bona fide news event. On the other hand, a special pre-recorded message by the President inaugurating an annual United Way charity drive was deemed not exempt.

Generally, though, the same considerations would apply here as would apply to bona fide newscasts and news interviews. The key, if one indeed exists, is whether coverage of the event is prompted primarily by a licensee's independent journalistic judgment that the event itself is newsworthy, regardless of participation of any political candidate.

Candidate news conferences are generally considered newsworthy. The fact that a portion of a news conference may be devoted to a self-serving political speech by the candidate does not affect its status, so long as the broadcaster had no reason to doubt the newsworthiness of an announced press conference beforehand.

The bona fide news event exemption specifically includes political conventions and incidental activities, such as acceptance speeches.

Debates

Candidate debates also qualify when it appears that the debate or its coverage was motivated by the licensee's determination that it would be a newsworthy event, rather than for the contrived purpose of giving political advantage to the participants. Moreover, a key determinant is that the debate be adversarial in nature and permit spontaneous interaction among the participating candidates.

The Commission formerly imposed restrictions regarding who could sponsor a debate, the selection of candidates, the arranging of their appearances and the overall production of the debate. These restrictions have all been removed, and a broadcaster and even candidates themselves (or their committees) may sponsor a debate directly, provided, however, that no candidate is in a position to control the content, format or production.

To qualify for the exemption, a debate (or any other exempt category of program, for that matter) need not include all legally qualified candidates for a given office. Courts have held that minor candidates have other means of communicating with the electorate.

Delayed Broadcast or Editing

A delayed broadcast or editing of any news event (including debates) remains exempt from equal opportunity obligations if the event remains newsworthy and if the delayed and/or edited report is intended in good faith by the broadcaster to better inform the public by maximizing audience potential and is not intended to favor or disfavor any candidate. The decision is made on a case-by-case basis. In an extreme instance, the Commission has permitted a delay of five weeks between a news event and its broadcast.

VI. Requests for Equal Opportunities

A right to equal opportunities does not arise automatically, but only upon proper request. There is no required form for a proper request. However, since equal opportunity rights are personal to an individual candidate, the request must be made by a candidate or by his or her authorized representative and not by a political party or special interest group. All equal opportunity requests must be for a "use" by the candidate.

Opposing Candidates

Rights to equal opportunities vest only in legally qualified opposing candidates. In order for candidates to be "opposing candidates" the same elective office must be involved. At a nominating convention or in a primary election, the opposing candidate would normally be from the same party, unless some type of coalition party is involved. Thus, a Republican seeking election in a Republican primary would not be an opposing candidate to a Democrat seeking election in a Democratic primary. If a candidate is running unopposed in his or her party's primary, then there would be no opposing candidate entitled to equal opportunities. Upon nomination, of course, equal opportunities would then accrue in favor of an opposing party's nominee for the same public office.

The Seven Day Rule

The most frequent complexity that generally arises with respect to requests for equal opportunities is the "seven day rule". This provides that a request for equal opportunities must be made within seven days of an opposing candidate's prior use. Thus, if A uses a broadcast facility on August 5, 10, 15, 20 and 25, B's request for equal opportunities on August 26 will only cover A's uses of August 20 and 25; B lost his right to request equal opportunities to A's first three uses by waiting more than seven days after they had occurred.

Two fine points. First, the seven day rule applies only to the request for equal opportunities and not to the date selected for the reply broadcast. Thus, in the above example, B's request can be for equal opportunity uses in late September, so long as the request itself is made within seven days of A's uses.

Second, a request cannot be based upon another candidate's equal opportunity. Where more than one prior user is involved, the request must be made within seven days of the first prior use giving rise to equal opportunities. Assume, for example, that A makes a use on August 1, and B requests an equal opportunity on August 6 to be broadcast on August 15. Can C, having learned on August 16 of B's August 15 broadcast, request an equal opportunity? No, because the first use which triggered the entire chain of equal opportunities was A's use of August 1, and C's request was due no later than seven days after that. (B's use was an equal opportunity, upon which a further equal opportunity cannot be based.)

Notice

A station is under no obligation to advise a candidate that time has been made available to an opposing candidate – even when a use occurs at the last minute of a campaign. However, upon inquiry from a legally qualified candidate, the station must provide the candidate with the facts relative to opposing candidates' requests, including the time sold and the changes made. This may be done by showing the candidate (or his or her representative) the station's political file.

Prior Requests for Expected Uses

Requests made before an opponent's use must be honored only if directed to a specific future use known at the time of the request. Thus, if A announces on August 1 that he will speak on August 15, B can request equal opportunities at any time between August 1 and 22 (this is, between the date of announcement of the use and seven days after the use). Further, when A will use a station according to a fixed and continuing pattern (such as a spot in the 7:00 p.m. news every Monday), then a single request from B for equal opportunities will apply not only to A's uses during the preceding seven days but for all of A's subsequent scheduled uses as well.

VII. Equal Opportunities

What it Means

Equal opportunities means that a licensee must treat all legally qualified candidates for the same office alike. It may make no discrimination in charges, practices, regulations, facilities or services rendered among legally qualified candidates for a particular office. This applies to the availability of broadcast time, the use of production facilities, the extension of credit, and the application of technical requirements.

When an opposing candidate requests an equal opportunity, the licensee must consider the daypart concerned, the length of the time segment, and the desirability of the particular broadcast time (including adjacency to popular programs). The station is not required, however, to afford an opposing candidate an opportunity to appear on the same program, or even at the same time of day or the same day of the week, as long as the time segments offered are reasonably comparable. Equal opportunity does not mean an identical segment of broadcast time.

The mechanics of working out equal opportunities is a matter normally left to the licensee and the candidates involved, within the framework of the general principles described above. A summary of some illustrative rulings may provide guidance in this area.

The Commission has found the following practices to comply with its equal opportunity rules:

- Refusal to sell time in exactly the same program or time period.
- Permitting only two candidates to appear on a single hour broadcast and giving the third candidate a half hour for his equal opportunity.
- Refusal to grant equal opportunity use in response to a "make good" program necessitated by serious technical problems (but only if it is the station's policy to give make goods to commercial advertisers on a routine basis).

On the other hand, the Commission has found the following practices to violate the spirit of equal opportunities:

- Scheduling of the initial use and equal opportunity in time periods having unequal audience potential.
- Letting one candidate preview his opponent's message before recording his own.
- Forcing one candidate to submit a script in advance.
- Requiring one candidate to prepay but allowing another to be billed (unless the licensee has a valid economic justification for the disparate treatment, based upon the candidates' past credit histories).
- Failure to enforce collection against one candidate.
- Selling so much choice time to one candidate that others could not obtain comparable exposure.
- Charging unequal rates for the use of production facilities.
- Adding a disclaimer tag to the spots run by only one candidate for a given office.

Exceptions

There are two broad recognized exceptions to equal opportunities.

"Last minute" uses

It is assumed that exposures become increasingly valuable as an election approaches. While no absolute rules have evolved, a licensee may provide less than numerically comparable opportunities shortly before a primary or general election. Thus, if A launches his campaign with a saturation buy of 100 spots from August 1-3 and B requests equal opportunities on August 7, a licensee may properly refuse B's demand to use all of his equal opportunities in early November. On the other hand, if the licensee were to honor B's demand, then he might be justified in allowing A to buy a few further spots in early November to offset B's more favorable placement.

The "Zapple Doctrine"

This exception is named after the case brought by Nick Zapple, then Chief Counsel for the Senate Communications Subcommittee. This exception is also referred to as the quasiequal opportunity principle. Equal opportunities, we have observed, apply only to requests by candidates or their authorized campaign committees or representatives. But the Commission recognizes that a political imbalance would occur were only the supporters of one competing candidate to buy or obtain time. Thus, the Zapple doctrine requires that where A's supporters have bought time, then legally qualified opponent B's supporters (but not B himself) must also be given an opportunity to buy comparable time. Similarly, a gift of free time to A's supporters must be countered with a gift of comparable free time to B's supporters upon request. Note, though, that the Zapple doctrine applies only to supporters of candidates with substantial support (generally meaning the nominees of major political parties). Further, it does not require the same degree of equivalence that is necessary for equal opportunities, but rather a roughly comparable opportunity.

Two miscellaneous final points:

Production Facilities

Equal opportunities apply here, too. If anything more than the bare necessities for a broadcast are made available to one candidate, then they must be made available to all opposing candidates at identical rates and terms.

Networks

A network use will trigger equal opportunity rights on each affiliate which carried the program or spot. Thus, if the network itself does not provide an equal opportunity upon proper request, it is the obligation of each affiliate to which a timely demand has been presented to honor the request.

VIII. Lowest Unit Charges

Without question, the most difficult and contentious area of the political broadcasting rules is the matter of determining the correct charge for political time. Section 315(b) of the Communications Act provides:

The charges made for the use of any broadcasting station by any person who is a legally qualified candidate for any public office in connection with his campaign shall not exceed

- during the forty-five days preceding the date of a primary or primary runoff election and during the sixty days preceding the date of a general or special election in which such person is a candidate, the lowest unit charge of the station for the same class and amount of time for the same time period; and
- at any other time, the charges made for comparable use of such station by other users thereof.

Charges Outside the Political Window–Comparable Rates

The second part of Section 315(b) generally poses few problems. Outside the 45 and 60 day periods preceding primary and general elections, each station is obligated to charge a political candidate no more than what it would charge a commercial advertiser for comparable time. That is, political advertisers must not be charged more than anyone else for the same frequency, class, and amount of time in the same period. A few cautions:

- If a station has both national and local rates, the latter would apply to candidates who seek to appeal to residents of the same general area as advertisers who qualify for the local rate.
- The "comparable use" rates are upper limits, and a station is free to charge less if it wishes. However, a discount rate given to one candidate must be extended to all of his or her opponents.
- All opposing candidates must be given the same rate. Thus, if a station raises its commercial rates after A buys a spot package, his opponent B is entitled to the same rate given to A. Conversely, if a station lowers its commercial rates after A buys a spot package, it would be obligated to sell spots to B at the new low rate and issue a refund to A for the difference.
- Run-of-Schedule ("ROS") or preemptible political spots must be scheduled in the same manner as commercial ROS's or preemptibles. If A's ROS spots happen to all run in prime time (through no manipulation or other favoritism by the station), then B would still assume the risk that his would not if he, too, bought an ROS package; to be assured of prime time exposure, B would have to buy fixed prime time spots (and pay the higher rate).
- In determining comparable charges, the rates actually charged to commercial advertisers must be used, even if they are discounted from the station's rate guide.

Charges Inside the Political Window–Lowest Unit Rates

The lowest unit charge rules take effect during the 45 and 60 day periods preceding primary and general elections when most political advertising is purchased. These rules are complex and subject to varying interpretations, not all of which are entirely clear. The basic point to remember is this—the political advertiser must be treated no worse than a station's "most favored advertiser" without regard to the quantity of advertising purchased. Thus, even though the political advertiser may be buying only a few spots over a relatively short period of time, the candidate must be treated as though he or she had been the station's best advertiser to whom quantity discounts may have been provided.

Please note that in order to qualify for lowest unit rates, at the time a use containing a direct reference to another candidate for the same office is purchased, a Federal candidate must provide the broadcaster with a written certification that the candidate will comply with the notice requirements outlined in Section VI.

Classes of Time

In the past, the Commission recognized limited classifications of broadcast time. As selling practices in the industry continue to evolve, the Commission permits stations to have numerous classifications, so long as the differences between them are genuine and are clearly defined.

First, some definitions as the Commission has adopted them:

- Fixed or fixed position – a spot that will be guaranteed to run on a particular date at a specified time.
- Rotation - a spot which is to run within a specified portion of the broadcast day.
- Run-of-schedule – a preemptible spot that may be scheduled at any time at the discretion of the station and may be preempted without prior notice to the advertiser.
- Non-preemptible – a spot that is not subject to preemption during any particular daypart, program or time period. In contrast to a fixed or fixed position spot, a non-preemptible spot may run any time during the designated program, daypart or time period.
- Preemptible with notice – a spot that may be preempted only after notice is provided to the advertiser by a specific time, for example one week before airing. Frequently, the advertiser will be given the opportunity to pay a higher rate in order to avoid preemption.

Previously the Commission had treated all classes of immediately preemptible time as the same. It now recognizes that many stations use a "yield maximization" system or "grid card" and that treating all such classes of time the same is not what Congress envisioned when it enacted Section 315 of the Communications Act. The Commission also recognizes that commercial advertisers may be willing to take a "significant prospective risk of non-clearance" and accordingly pay less, a risk that a political advertiser might not be so willing to accept.

The Commission will permit stations to establish and define their own reasonable classes of immediately preemptible time. These separate classifications, however, may not be based solely on price or the identity of the advertiser. There must be some demonstrable benefit to the advertiser as well as a different obligation upon the station in each classification of time such as varying levels of preemption protection, scheduling flexibility or make good benefits. There can only be a single class of preemptible time, however, where a station sells by auction so that any spot can be preempted by an advertiser who offers a higher price. By way of contrast, a station may establish separate classes of immediately preemptible time if it discloses a specific price (or limited price ranges) as well as the estimated probability that a spot at each price level will run. Each classification of time must be disclosed to all candidates. The Commission, concerned that there might be some abuse, permits candidates to file complaints challenging classifications viewed as manipulative or discriminatory.

The same policy will also apply to time that is preemptible with notice. Stations may establish separate classes of time with varying periods of notice (one day, two days, one week, one month, etc.). These classifications must also be clearly defined, fully disclosed and made available to all candidates.

A station generally may not steer a candidate to non-preemptible time by stating that preemptible time is sold out. Preemptible time can be sold out only if its preemptible spots may be bumped by spots purchased at a fixed rate or by a higher class of immediately preemptible time. Preemptible time may also be considered sold out if, as a matter of normal business practice, the station limits the number of spots sold in each class of preemptible time. These practices must be followed throughout the year and cannot be restricted to political periods.

Special Classes of Political Time

The Commission recognizes that fixed position or non-preemptible spots are more suited to the needs of political advertisers. A licensee may create a special class of non-preemptible spots available only to candidates under either of two conditions.

First, the special class must be discounted so that it is no more expensive than preemptible time sold to commercial advertisers which bears a genuine risk of preemption. Thus, candidates cannot be charged a premium for non-preemptible time if in fact equivalent or lower-priced preemptible spots are virtually certain to run. Note, though, that a class of time is not considered to be specially for candidates as long as it is genuinely offered, and legitimately available, to commercial advertisers (even if they have not purchased it).

Second, news adjacencies can be considered a separate class of time for politicians only when the spots are guaranteed to run adjacent to the news; these are especially desirable when candidates have been banned from access to the news programming itself. If candidates are banned from access to the news, then the lowest unit rate for this class cannot exceed the lowest unit rate for commercial spots within the news. However, if candidates could have purchased spots within the news, then adjacencies may be priced consistent with the lowest unit price of commercial spots in the same adjacent time slot, even if it reflects a premium over the price of the news spots themselves. Be careful to distinguish this type of spot, though, from one which is sold as part of a broader rotation but which happens to run adjacent to the news programming; the lowest unit rate for such a spot would be that of the rotation under which it was sold.

Political Discounts

While stations may create a special class of time for political advertisers only under special circumstances, there is nothing in the rules to prevent stations from creating a discount available only to political advertisers. Thus, a station may offer non-preemptible time to political advertisers at a special discounted rate not available to other advertisers. This may be an efficient way to avoid many of the complications in calculating the lowest unit charge when a station has multiple levels of preemptible time. It will avoid a later accusation that the candidate could have purchased preemptible time and obtained the practical benefit of non-preemptible time. For example, a station may offer non-preemptible time to political advertisers at a rate less than that offered to other advertisers. This rate must be lower than the highest level of preemptible time that is actually subject to preemption. This will avoid the possibility that candidates will be steered toward buying non-preemptible time when they could have purchased preemptible time and had a significant chance their spot would have aired.

Assume that a station has three levels of preemptible time. Level A (the highest-priced time) historically has a 90 percent chance of airing. Level B has a 70 percent chance of airing and Level C has a 50 percent chance of airing. That station could offer non-preemptible time to a candidate at a price between level A and Level B preemptible time; that is, if non-preemptible time is offered to candidates at a discount, the price must be lower than the highest level of preemptible time. A similar result would be achieved by pricing this special non-preemptible political time at the "average unit rate" for the particular class of preemptible time. However, there must be more expensive preemptible time that is actually subject to preemption. In the above example, if Level A time were not preempted, then time purchased at the special discounted rate for non-preemptible time would be subject to a rebate lower than Level B, the level of the lowest unit charge for spots actually subject to preemption.

If rebates are required, they must be calculated on a periodic basis and made promptly–and, to the extent practical, within a useful time frame. The Commission expects stations to make rebates on an even more expeditious basis as election day draws closer.

Rotations

Many stations use various forms of rotations to sell preemptible time. The Commission recognizes distinctly different rotations as separate periods of time for calculating the lowest unit charge even if rotations overlap. In analyzing the reasonableness of a station's determination, the Commission will consider whether two ostensibly different rotations are consistent with the station's normal selling practices and are based upon objective criteria such as varying audience size or demographics which warrant differences in their prices. It is essential that a station disclose to candidates either all of its rotations or a complete summary of its procedures for identifying all possible rotations that can be purchased.

The Commission also recognizes that prices may vary from week to week. Stations may calculate the lowest unit charge solely on the basis of spots that ran during the relevant week, even if some of the spots were the result of contracts that are in effect over the course of several weekly rotations. Assume that a commercial advertiser has bought a 13-week rotation and at the time of the purchase the price per spot was $200. During the course of that rotation, the station increases its rates to other commercial advertisers to $250. The political advertiser must pay no more than $200 even though commercial advertisers may be charged more.

Package Plans, Volume Discounts and Bonus Spots

The Commission does not consider package plans or bonus spots to be a separate classification of time. All rates and bonuses offered to commercial advertisers in packages must be included in lowest unit charge calculations. This includes all packages and bonus spots, whether individually negotiated or available to every advertiser. When the package is simply a volume discount within a single class of spot, then the unit rate for each spot within the package is the package price divided by the number of spots. When a package contains spots in more than one class or time period, though, a licensee must allocate the package price among the spots in each class or time period.

Determining the value of bonus spots or spots within a package can be illustrated as follows. If a radio station sells five morning drive spots for $1000 and throws in another five morning drive spots at no charge, the average cost of the spots for lowest unit charge purposes would be $100 (that is, the $1000 total price divided by the ten total morning drive spots). If, though, the station were to sell the five morning drive spots for $1000 and then throw in another five ROS spots at no charge, the station could value the ROS spots at the lowest unit charge for that class of time (for example, $10 each), resulting in a lowest unit rate for the drive time spots of $190.

The prices assigned to each spot in the package must be documented, either on the face of the contract or invoice or on a separate internal memorandum. If a separate memorandum is used, it must be prepared simultaneously with the formation of the contract and should be signed and dated by an authorized representative of the station. Moreover, if the pertinent rates for lowest unit charge purposes are included on the separate document but are different from the value reflected in the contract and/or invoice (which may reflect only an average rate or total cost), then the information on the separate document must either be included in the public file or otherwise disclosed to candidates seeking to purchase time.

Non-Cash Incentives

Non-Cash merchandising and promotional incentives which have minimal value (such as coffee mugs) or which might imply a relationship between the station and an advertiser (such as a bumper sticker) need not be offered to candidates. A more substantial incentive (such as a vacation) would have to be offered to any political advertiser who became eligible by purchasing the required amount of advertising.

Billboards and Promotional Announcements

Billboards (ie: brief promotional announcements preceding or following a sponsored program) and announcements of upcoming programming need not be offered to political advertisers, nor must their value be factored into lowest unit rate calculations for the class and time period in which they appear. The Commission's exemption of these types of bonuses is premised upon the impracticality of including the required political sponsorship identification in such mentions, which are generally quite brief.

PSAs

A special consideration applies to "paid" or "sponsored" public service announcements ("PSAs") (that is, PSAs promoting a non-profit organization or activity that are paid for, at least in part, by a commercial advertiser and are identified as such). An example would be a United Way solicitation followed by mention that this reminder was brought to you as a community service by a local auto dealer. Sponsored PSAs sold by themselves would be counted the same as any other paid advertisement for purposes of calculating lowest unit rates. If a station offers sponsored PSAs to commercial advertisers as a bonus or as part of a package, then the value of these paid PSAs must be calculated as part of the lowest unit charge in the same manner as package plans by assigning a reasonable value to the bonus PSA spots. Thus, if the paid PSA is of the same class and time period as a commercial spot, then the "package price" must be prorated among commercial and paid PSA spots in order to arrive at the lowest unit rate. When the paid PSA is run in a different class or time period, then the Commission will generally defer to the station's reasonable good faith judgment in allocating the price of a package among the PSAs and spots. Be careful, though, in assigning too low a value to the paid PSAs, as this could depress the lowest unit charge for the classes and time periods during which the PSAs were aired.

Advance Payment and Credit Policies

A station is required to extend credit only to those candidates or their advertising agencies that have a credit relationship established with the station. If there is no credit relationship, the station may require payment in advance from a candidate for an advertising schedule no earlier than seven days before the first spot on the schedule is to run.

Period for Rate Comparisons

The Commission generally requires that lowest unit rates be calculated in comparison to commercial spots running in the same week as the political spot in question. However, artificial manipulation of long-term schedules (that is, to eliminate low-priced spots from a seasonal or annual contract for the weeks near an election) may be disregarded.

Increases in Rates During the Election Period

Stations may increase rates during the 45 or 60 day political window, but only for a commercially valid reason, such as audience ratings, seasonal program changes or, if time is sold routinely in weekly rotations, on a weekly basis. A candidate who purchases time after a rate increase, however, is entitled to the lower rate paid by another advertiser who contracted for time before the rate increase so long as the spots are of the same class of time. Thus, if a long-term advertiser purchases time at a lower rate than that charged during a particular week due to a rate increase, the long-term lower rate must be used to calculate the lowest unit charges for the same class and amount of time for those weeks in which such spots are aired. The long-term advertiser in this instance is the "most favorable advertiser." Thus, the political advertiser must obtain the same benefit.

"Fire Sale" Rates

"Fire sales" during a political window could result in an artificially low lowest unit charge rate, and should be viewed as a dangerous practice. Before selling any spots at deeply discounted rates, a broadcaster should calculate the cost of the unsold inventory against the cost of rebating political advertisers down to the lowest unit charge established by the fire sale rate. In some instances, particularly where there is a heavy volume of political business on the air, it may be less expensive to retain the unsold spots in inventory than to sell them at fire sale rates and have to provide rebates to political advertisers.

Advertising Agency Discounts

Advertising agency discounts must be passed through to a candidate who does not utilize an advertising agency. Rep commissions, though, are not considered in calculating lowest unit charges.

Spots in Specific Programs

The Commission continues to recognize that prime time programs (primarily on television) will differ in value on a program-by-program basis. If the station's normal sales practices treat individual programs in this fashion, the Commission will recognize each such program as a separate class of time for purposes of calculating the lowest unit charge.

Sold-Out Time

A broadcaster may consider a particular program or day part to be sold out so long as a candidate legally entitled to time is provided reasonable access to the station's overall schedule. A station may claim to be sold out of preemptible time only if its preemptible spots may be bumped by spots purchased at a fixed rate or by a higher class of immediately preemptible time. On the other hand, a station cannot claim that it is sold out of preemptible time where all of its preemptible time is sold in an auction-like manner whereby advertisers can continue to preempt each other simply by paying an incrementally higher rate. Thus, a station may not steer a candidate to purchase higher priced time if it gives commercial advertisers the opportunity to clear merely by paying an increased rate.

Local and National Rates

There is no distinction between local and national rates for purposes of lowest unit charges. Thus, the lower rate controls the calculation of lowest unit charges.

Production Facilities

Lowest unit charges only apply to purchases of broadcast time and do not apply to the use of a station's production facilities. The station is free to charge its standard commercial rates for use of production facilities, regardless of whether a candidate qualifies for lowest unit charges in the purchase of broadcast time. Stations may not discriminate against political candidates vis a vis commercial advertisers. For example, if free production of spots is available to commercial advertisers, free production of spots must also be offered to political candidates. Note from Section XI, below, that production required to add a missing legal element such as a sponsorship tag may be billed at standard rates.

Make Good Policies

A "make good" is a spot run without charge to compensate for a spot that had been scheduled but was not broadcast due to preemption or a technical problem. It can also represent compensation for failure to deliver guaranteed audience levels during a scheduled broadcast.

If a station sells preemptible time on a weekly rotation basis and a make good happens to run in a normally more expensive rotation period, then it will become the lowest unit rate for that time period during the entire week. To illustrate, assume a candidate buys three 30-second, $100 spots to run between 6:00 p.m and 7:00 p.m. sometime Monday through Friday in a given week. Assume further that a $75 commercial spot preempted from an earlier date happens to run at 6:50 p.m. that Friday. This will cause the $75 rate to become the lowest unit charge for any spot run during the 6-7 p.m. period of the entire week and the candidate would be entitled to a $25-per-spot refund. Make goods, therefore, should run within the same time slot as originally scheduled.

Special considerations apply to make goods which arise not because of technical failure, scheduling errors or preemption, but rather due to a shortfall in a promise of audience delivery. The problem here is that pertinent audience information may not be ascertainable until after an election. In such cases, a station should either provide a prompt rebate or offer a make-good in connection with any subsequent general or special election in which the candidate may be running.

Time Sensitive Make Goods

If a station's policy is to make good a spot preempted by a higher paying advertiser, and if it is willing to run the make good spot within a specific time frame (i.e., a holiday sale make good would be sure to run before the holiday or an event make good would have to run before the date of the event), then it must also ensure that make goods for political spots air before the election. On the other hand, if a station does not make good preempted commercial spots, there is no obligation to do so with respect to political ads. If that is the station policy, then candidates may prefer more expensive fixed-rate spots to assure the exposure they seek.

IX. The Disclosure

The Commission emphasizes that stations must fully disclose their selling practices to political advertisers out of concern that stations may steer naive political advertisers toward premium priced fixed or non-preemptible time when their needs would have been served by a lower priced class of time.

Following the 1990 election, many candidates complained that they were not aware that they could have had their spots run without paying for non-preemptible time, even though they had the services of experienced advertising agencies and time buying services. (In their defense, stations complained that agencies and buyers deliberately bought unduly expensive ads in order to bolster their own compensation, which was a percentage of the total amount spent.) To reduce station liability and confusion about what disclosure is required, the Commission now requires that stations must disclose to political advertisers all discount privileges available to commercial advertisers. The disclosure should be attached to any avail sheet provided to political advertisers. Additionally, rep firms must be advised that the disclosure must be attached to any avails it provides and must accompany any order it returns to the station.

The burden of disclosure is on the station, not the candidate. Licensees must always disclose their selling practices to political advertisers, not just during the 45 day period preceding primary or run-off elections and the 60 day period before the general election, but during the "comparable rate" periods as well. This disclosure requirement applies regardless of the complexity of a station's rate structure is and even if it has no rate structure at all, but negotiate deals based on whatever price it can obtain. The Commission has declined to adopt a model disclosure form, but has stated that the disclosure made to candidates must include at a minimum the following:

- A description and definition of each class of time available to commercial advertisers that is complete enough to permit candidates to identify and understand the specific attributes of each class of time.
- A complete description of the lowest unit charge and related privileges (such as priorities against preemption and make goods prior to specific deadlines) for each class of time offered to commercial advertisers.
- A description of the station's practices with regard to selling preemptible time based on advertiser demand (including "current selling level" or "street rate") with the assurance that candidates will be able to purchase time at these demand generated rates on the same basis as commercial advertisers.

- An approximation based on current experience of the likelihood of preemption of each class of preemptible time. This is designed to protect candidates from being steered to higher-priced fixed or non-preemptible time when there is an acceptable probability that a certain level of preemptible time would air. If a station has a practice of selling preemptible time to a high-volume advertiser with an understood assurance that the station will see to it that the spot will run, that same privilege must be accorded to the political advertiser even if the candidate is only purchasing a single spot.

- If the station has any sales practices based on audience delivery (such as no charge bonus spots if the promised audience is not delivered), these practices must also be made known and made available to the candidate.

Once the initial disclosure is made to a candidate, it need not be repeated each time the candidate purchases additional time. However, the station remains obligated to update or modify all previous information as often as necessary to insure its accuracy.

Finally, the Commission recognizes that there is no way to compel a candidate to heed the disclosure. For this reason, we recommend that all disclosures be in writing and attached to the contract. Non-federal candidates may be required to sign a written acknowledgement of receipt of the disclosure as a condition of initial access to a broadcast station. Equal opportunities, though, cannot be denied on the basis of a candidate's refusal to sign a receipt of the disclosure. Moreover, because of their right to station access, federal candidates cannot be required to sign a receipt of the disclosure. If a candidate or candidate's representative refuses to sign a receipt, a notation to that effect should be placed in the political file. A sample form for that purpose is included in Appendix C.

As the purpose of the disclosure is both to inform potential political advertisers and to protect the station against accusations of deceptive selling practices, we strongly recommend that the disclosure be phrased in simple, non-technical language that is likely to be understood even by those with no prior experience in this area. It is essential to err on the side of extensive disclosure, so as to avoid a claim that a candidate was lured into buying more expensive or extensive time than was reasonable to achieve their objectives.

A sample disclosure form including an example of a fairly complex table of time classes is attached as Appendix B. It was developed by Jerald Fritz, General Counsel to Allbritton Communications Company, and has been reviewed by FCC staff. We would be pleased to review any proposed disclosure statements prior to implementation.

X. Censorship of Uses

Most political broadcast rules are complex, subject to interpretation, exceptions and qualifications. But if there is a rule in political broadcasting which is nearly absolute it is that a use cannot be censored in any way.

This principle is often put to the test by attorneys and other candidate representatives claiming that opponents' spots are false and demanding that they be pulled. But if the challenged material qualifies as a use, then the station has no choice but to run it as scheduled.

There are only two possible exceptions: the broadcast of obscenity, which is prohibited by a Federal criminal statute, and the broadcast of a direct incitement to immediate lawless action. Both fall outside the Constitutional protection of free speech.

It remains unclear whether political advertising containing obscene material is to be free from censorship and has to be broadcast. In a memorandum to Congress, the Commission suggested that the criminal statute prohibiting obscene broadcasts overrides the statutory no-censorship provision. Although no formal decision has ever been rendered, the Commission staff has informally advised that a broadcaster may refuse to air a political broadcast which is obscene.

The same statute also bans the broadcast of indecent or profane material, but the constitutionality of these provisions has never been tested and is doubtful. Such material presents a threshold problem of determining whether it is indecent in the first place. That, in turn, requires that context be considered. FCC staff has suggested that candidates should be afforded great leeway in presenting their views on campaign issues and so political speech, even if highly distasteful or rude, might not qualify as indecent.

In 1992, there was a proliferation of television advertisements by candidates for federal office depicting abortions and aborted fetuses in graphic terms. These candidates invoked the "reasonable access" provision of Section 312(a)(7) of the Communications Act to demand that the spots air at times of their choosing. The spots put licensees who contended the advertisements were obscene or indecent in the awkward position of either violating the law against indecent and obscene broadcasts or the law requiring reasonable access for federal candidates.

A federal district court judge in Atlanta ruled that stations could restrict a federal candidate's graphic abortion advertisement to a "safe harbor" comprising the hours between midnight and 6 A.M. when children were less likely to be in the audience. The Commission then held that a licensee who made a reasonable, good faith judgment that a spot was indecent could restrict it to the "safe harbor" period. Subsequently, however, the Court of Appeals for the District of Columbia Circuit struck down the Commission's "safe harbor" for indecent programming. Even so, the Court did not disturb a broadcaster's right to precede an indecent political spot with a warning.

Although this type of situation remains troubling (especially since the penalty for refusal to run a federal spot could extend to license revocation), no recent attempts have been made to air indecent material under the guise of a political use, and so perhaps the problem has subsided. Nonetheless, should it recur, then licensees will have to consider the risks of running, rejecting or attempting to channel the objectionable material.

So far, there have been no cases in which a broadcaster was exempted from airing a use that could constitute a direct incitement to immediate lawlessness. Indeed, the Commission has held that threats against the station do not warrant an exemption from the no-censorship provision.

Aside from these two exceptions, which are rarely encountered, censorship of a use is forbidden. Musical backgrounds, which clash with a station's image, libelous remarks or even racial slurs may not be censored by a station during a use. To take an extreme example, if a legally qualified candidate buys time for a use, never once mentions his campaign, and proceeds to use the time to slander his creditors, the use must be permitted without licensee intervention.

Nor can a licensee engage in procedural censorship, such as requiring a tape or script in advance (to screen for content) or attempting to limit the topics to be discussed. An advance tape or script may be requested, but only to check its qualification as a use, to verify that it contains proper sponsorship identification, and to measure its length. If a candidate refuses to supply advance material, he or she cannot be compelled to do so, but can simply be reminded of sponsorship and length requirements. Similarly, if a candidate wishes to appear live, the licensee may not inquire as to the proposed content beyond what is necessary to provide required facilities.

A licensee may add content neutral audio and/or visual disclaimer tags to political spots. Acceptable disclaimers could identify the spot as a paid political advertisement or a statement that the views expressed do not represent those of the station; however, such tags must be added to all advertising broadcast on behalf of every candidate for the same office. A licensee may not add a disclaimer that in any way might be construed as an editorial comment.

In exchange for its inability to exercise any control over the content of a "use," a broadcaster is immune from liability for any libel or defamation contained in a use that it broadcasts. This federal protection preempts any state or local laws to the contrary. However, the immunity only extends to "uses." Broadcasts by supporters of the candidate are not immune. The licensee can protect itself from liability through a requirement of prior approval of a script or tape of any material other than a use. In addition, a station may freely address issues raised by political advertising in its news and public affairs programming.

XI. Sponsorship

Identification

The Communications Act and the Commission's rules require that any sponsored message identify who paid for it. The Federal Election Campaign Act goes further to require a statement as to whether a political message was authorized by any candidate. The 2002 Campaign Reform Act seeks to assign personal responsibility of the candidate or other sponsor. These requirements apply to all political messages and are not limited to "uses".

The requirements are as follows:

- If a program or spot is both paid for and authorized by a candidate or his campaign committee, the announcement must identify the candidate and state that the candidate has approved the broadcast. On radio spots for a federal candidate the statement must be read by the candidate. The last four seconds of a television spot for a federal candidate must consist either of an unobscured, full-screen view of the candidate making the required statement or the candidate's voice accompanied by a clearly identifiable photographic or similar image of the candidate, together with a clearly readable printed text of the statement. In addition, the announcement must state that it is paid for or sponsored by (the name of the candidate or the legal name of the candidate's campaign committee).

- In addition to the foregoing, a further requirement applies to spots qualifying for the lowest unit rate that contain a direct reference to another federal candidate for the same office. Radio spots must also identify the office sought. TV spots must state that the candidate's authorized committee paid for the broadcast.

- In order to qualify for lowest unit rates, a Federal candidate must certify to a station that he or she will comply with all of these notice requirements.

- If a third party pays for the program, and it is authorized by the candidate or his committee, then the sponsorship portion of the announcement must read: "Paid for (or sponsored) by (name of third party) and authorized by (name of candidate or his committee)."

- If the program is paid for by a third party and not authorized by any candidate, then the announcement must read: "_____ is responsible for the content of this advertising;" with the blank to be filled in with the names of the payor and any connected organizations. A television spot for a federal candidate must accompany the audio statement with an unobscured full-screen view of the political committee or other person making the statement together with the printed text of the statement, all for a period of at least four seconds.

Note that in all of the above announcements, the words "paid for by" or "sponsored by" are mandatory. Substitutions such as "brought to you by" or "made possible by" are not acceptable.

One further point: if a station donates time to a candidate, either such time can be identified as "provided by Station XXXX as a public service" or mention of sponsorship can be omitted. (The authorization portion of the tag would still be required, though.) Note that donations of time will trigger free equal opportunities upon request by opponents. If an opposing candidate claims such equal opportunities, then the only announcement required would be that the material is authorized by the candidate or his or her committee. Similar considerations apply if a candidate agrees to accept spots or program time in lieu of equal opportunities against a station employee who is a candidate.

Solicitation of Funds

If a program or spot is financed by a political committee and solicits political contributions, the following must be added: "A copy of our report is filed with the Federal Election Commission and is available for purchase from the Federal Election Commission, Washington, D.C."

Controversial Issues of Public Importance

Commission rules require that any matter which discusses a controversial issue of public importance (including most political material), that is furnished to a station as an inducement for broadcast (whether or not any payment is made), must contain an announcement that it was furnished and by whom. This could include audio feeds and film clips supplied by a candidate for use in a newscast or other programming. However, Commission staff advises that if a station edits such material into a substantially different form or embeds a portion into its own program, then an announcement would not be required. If needed, the announcement would be the same as in the above three examples, but with the words "Furnished by" substituted for "Paid for by" or "Sponsored by."

Placement of the Sponsorship Identification

Regardless of which announcement applies, it must appear or be heard either at the beginning or at the end of any spot or other broadcast matter that does not exceed five minutes in length. If the length does exceed five minutes, then the required announcement must be given at both the beginning and the end of the program.

Licensee's Responsibility

It is the responsibility of the broadcaster to determine that all sponsored political messages comply with the above requirements. If the spot does not comply, the broadcaster must add or substitute the required announcement. If a station routinely includes the time required for sponsorship identification in computing the length of commercial announcements, then the same practice can be applied with respect to the tag added to political announcements. If there are problems regarding the sponsorship identification, the station should attempt to work them out with the candidate. If these problems cannot be resolved, the station is permitted to insert its own sponsorship identification in compliance with the Commission's rules, even if it means covering up part of the candidate's aural (or visual) message. The station is not required to provide additional time for the sponsorship identification free of charge. The broadcaster may choose whatever means it decides are appropriate to meet its responsibility for proper sponsorship identification.

Recognizing that there may be instances where there may not be sufficient time to prescreen the political sponsorship ID, the Commission allows a station to run a spot the first time without risking a violation. Once aired, however, the station will be required to add, at the candidate's expense for the costs of production, the required identification for future broadcasts if the spot is not in compliance.

Hidden Sponsorship

A question will occasionally arise as to whether a broadcaster has a duty to investigate charges of "hidden sponsorship," that is, where there is some indication that an unidentified party is really responsible for an ad. The emerging standard appears to be that the duty arises only when the broadcaster is presented with circumstances that raise a suspicion in the mind of a reasonable person. Actual knowledge of the true sponsor would require an appropriate identifying announcement. But if confronted with conflicting allegations of sponsorship, a broadcaster may rely upon the nominal sponsor's representation that it is, in fact, the true sponsor, absent circumstances so strong as to outweigh the value of such an assurance. In any event, no arduous investigation is required.

Pre-Broadcast Submissions

A station may request, but cannot require, pre-airing submissions of political advertising. Remember, this is not for purposes of censorship, but only to verify length, technical compatibility and compliance with the sponsorship identification rule.

State Requirements

Occasionally, a state may impose more stringent sponsorship regulations. Texas, for example, requires that all political tags include the address of the sponsor as well as a statement that the spot is a paid political announcement. To the extent that such state requirements supplement rather than conflict with FCC requirements, they are valid.

XII. Political File Contents

Broadcasters must keep a political file containing information with respect to all requests to purchase political broadcast time, whether or not made on behalf of a legally qualified candidate. Covered are all messages relating to any political matter of national importance, including legally qualified candidates, any election to federal office or a national legislative issue of public importance. The records must contain the following information:

- Whether the request to purchase broadcast time is accepted or rejected by the licensee
- The rate charged for the broadcast time
- The date and time on which the broadcast is aired
- The class of time purchased
- The name of the candidate, office, election or issue to which the communication refers (as applicable)
- If a request is made by, or on behalf of, a candidate, then the name of the candidate, the authorized committee of the candidate and the treasurer of such committee
- In the event of any other requests, the name of the person purchasing the time, the name, address and phone number of a contact person for such purchaser, and a list of the chief executive officers or members of the executive committee or board of directors of such purchaser

It must be reemphasized: all requests for political broadcast time—including equal opportunities—must be reduced to writing and kept in the political file. Sample standard written agreement forms for political advertisers are found in Appendix C to this manual. Please note, though, that this rule applies only to specific requests for time and that mere inquiries as to rates or for general information are not included.

XIII. Access to the Political File

The political file must be maintained at the same location as the station's public inspection file. It must be available for inspection during all normal business hours, plus at other times (especially close to an election) as necessary to apprise opponents of potential equal opportunities. Prior appointments cannot be required. Those seeking to inspect the file may be asked for personal identification (name and address only) but no other information, including organizational affiliation or the purpose of the request. While stations should be as welcoming as possible, abusive behavior by a party seeking inspection may justify denial of further access.

Although traditionally the political file is kept in paper form, the trend of the future clearly is toward electronic databases. If the file is in electronic form, a computer terminal must be available to afford access to the contents of the file. Unlike requests for other items in a station's public file, telephonic requests for information in the political file need not be answered, although it is essential that each station adopt and apply a uniform policy for all such requests, so as to be sure that no favoritism is displayed.

The Commission emphasizes that the file must be kept "neat and accurate" so that "anyone viewing the contents of this file will be able readily to discern what the station has sold or otherwise provided to each and every candidate." To satisfy the requirement of maintaining in the political file a record of the spots that actually run and the time the spots run, the licensee may include in the file a notation that the station will provide prompt assistance, including access to its program logs, to candidates requesting this information.

The political file must be maintained for two years after the election. After this time period the file may be discarded, unless there is a claim against the licensee or an investigation by the Commission for which material in the political file is relevant.

Updates

The political log should be updated on a daily basis and made available as part of the station's public inspection file. A primary purpose of the political file is to permit opposing candidates or their representatives to determine whether they are entitled to equal opportunities triggered by political broadcasts of their opponents.

In lieu of keeping a separate political log, a file of Agreement Forms may be kept. Note, however, that all forms requesting time must be placed in the file—even if the request is refused. If a "form file" is used, it must be supplemented with a log of gifts of free time. Rebate information also must be included in the political file.

The political file is the primary means by which candidates, the public and the Commission can monitor a licensee's compliance with the political broadcasting rules. A 1990 audit of 30 stations revealed that some did not have complete and well-organized political files and the Commission assessed forfeitures against such licensees. Under the Commission's current guidelines, the base forfeiture is $7,500 for each violation of the rule requiring maintenance of a political file and $12,500 for each violation of other aspects of the political broadcasting rules.

XIV. The Fairness Doctrine

The Fairness Doctrine is no longer in effect, either as a general matter or as it was applied to ballot issues in elections.

In 1987 the Commission repealed the major aspects of the Fairness Doctrine in response to a complaint concerning coverage of a controversial issue of public importance (the Syracuse Peace Council case involving the controversy surrounding construction of a nuclear power plant). It did not at that time address the issue of whether the Fairness Doctrine remained intact for elections.

A corollary to the Fairness Doctrine, commonly known as the Cullman Doctrine, had required stations to provide free time to Side A on a ballot issue where Side B had purchased advertising time and Side A could not afford to purchase time. When it repealed the Fairness Doctrine, the Commission left open the question of whether it would continue to require stations to provide free time in response to paid time on ballot issues.

In January, 1992, the Commission clarified its position, holding that the Fairness Doctrine does not apply to ballot issues. Thus, it now appears that the Cullman Doctrine is of no further effect. However, the "Zapple Doctrine" (see section VII) remains in effect.

In 2000, the Commission launched an inquiry to explore the rationale behind and continued usefulness of various adjuncts to the fairness doctrine including the political editorial and personal attack rules discussed in the next two sections. The outcome of that proceeding may have a significant impact upon resurrecting or modifying all of these policies.

XV. Political Editorials

In November 2000 the FCC eliminated its rules concerning political editorials and personal attacks, as required by the US Court of Appeals for the District of Columbia Circuit following a successful challenge by the Radio-Television News Directors Association. However, while the Court ruled that the policies could not be sustained on their existing rationales, it did not reject the substance of the policies; rather, it noted that the FCC (or, presumably, Congress) was free to conduct a new rulemaking and reinstate the rules if it determined that their purposes remained valid. That possibility still exists. Therefore, we are describing the former rules in the remainder of this, and in the next, section.

Unlike most of the political broadcast rules, the broadcast of a political editorial triggered an affirmative obligation on the part of the broadcaster to notify candidates and to provide free response time.

A political editorial is any broadcast statement that represents the view of station management and which either endorses or opposes a legally qualified candidate. Thus a statement of personal political opinion by an announcer would not be an editorial. On the other hand, a news item announcing a station owner's voting preference would be a political editorial. Endorsement of or opposition to a candidate can be indirect, such as in a statement calling for a change in the local school board when certain members are running for reelection. In addition, editorial recaps in which a station's endorsements or positions are quickly summarized are themselves editorials, which generated additional notification and response obligations.

Notice

While the rule was in effect, upon broadcast of a political editorial, a licensee, within 24 hours, had to transmit:

- notification of the date and time of the editorial;
- a complete script or tape, and
- an offer of a reasonable reply opportunity for a candidate, or his or her spokesperson, to respond over the licensee's facility.

The Commission's rules were very specific as to how the notice was to be given.

- If the editorial opposed a candidate, then the materials had to be sent to that candidate.
- If the editorial endorsed a candidate, then the offer had to be transmitted to all legally qualified opposing candidates.
- If the editorial was to be broadcast within 72 hours prior to the day of election, then the licensee had to act sufficiently in advance of the broadcast to enable all appropriate candidates to have a reasonable opportunity to prepare and present a response in a timely manner.

For all practical purposes, unless all the appropriate candidates had been advised sufficiently in advance, editorials within three days of an election were effectively barred.

Response Requirements

A reasonable opportunity to respond, in most cases, consisted of comparable time and scheduling. But it could have required far more, as the time allotted had to permit a meaningful response. That is, if a one-minute editorial briefly criticized ten incumbents, then a six-second reply opportunity for each clearly would have been inadequate.

The station could have required that a candidate's spokesperson, rather than the candidate, respond. (If the candidate appeared personally, this would have been a free "use," which, in turn, would have required comparable gifts to all opponents.) With

that exception, the format and content of the response time were a matter largely within the discretion of the candidate. Thus, if a 30 second editorial was broadcast six times, the candidate could be given broad discretion as to whether the spokesperson will take six 30-second responses, one three-minute program, etc., provided that the impact of the scheduling of the response did not grossly exceed that of the original editorial. At the same time, since the candidate did not appear and since there was no use, a licensee could have censored the reply within reason.

XVI. Personal Attacks

Please see the introduction to the previous section, as the same considerations apply to the status and future of the personal attack rule.

When a derogatory personal reference was made upon an identifiable person or group in the context of discussing a controversial issue of public importance, a personal attack was deemed to have occurred.

Action Required

Like the political editorial rule, the personal attack rule also required affirmative action by a licensee. However, the rule was rarely triggered in political broadcasting, since it did not apply to statements made by a legally qualified candidate, his or her authorized spokespersons, or those associated with him or her in the campaign directed to other candidates, their authorized spokespersons or those associated with them. Nor did the rule apply to bona fide news interviews and on-the-spot coverage of bona fide news events.

Three Elements

To trigger the rule:

(1) An attack must have been upon the honesty, character, integrity or like personal qualifies of an identified person or group. This meant that disagreement with or disparagement of a person's political views, voting record, knowledge, intelligence, fiscal responsibility or background—no matter how vehemently expressed—did not constitute personal attacks.

(2) The identity of the individual or group must have been recognizable by a substantial segment of the audience, even if specific names were not used. A reference to "those crooks on the school board" would have suffficed.

(3) The attack must have been made during the presentation of views on a controversial issue of public importance. Most election topics were presumed to be controversial issues of public importance.

A Licensee's Duties

Once the rule applied, within a reasonable time, and in no event later than one week after the attack, the licensee had to transmit to the person or group attacked:

- notification of the date, time and identification of the broadcast;
- a script or tape of the attack (or an accurate summary if a script or tape was not available); and
- an offer of a reasonable opportunity to respond over the licensee's facilities.

Except for the fact that there was no 72-hour rule here, the "reasonable opportunity" provision was to be interpreted as discussed previously with respect to political editorials. Should the person or group have refused the station's offer, the licensee need have made no further effort. The right to respond was a personal one, and no outside party was able to raise a complaint on behalf of the party actually attacked.

Note that the personal attack rule applied whether or not the licensee was responsible for the attack. In any event, it was the licensee who was responsible for remedying the personal attack. Thus, if a paid issue advertisement contained a personal attack, then it was the licensee, rather than the sponsor of the advertisement, who had to take remedial steps. Similarly, an attack during a network or syndicated program triggered an obligation in each affiliate or station carrying the program to notify and offer an opportunity for a response.

XVII. Issue Advertising

Political action committees (PAC's) and other outside interest groups have become increasingly involved in the sponsorship of broadcast issue advertising. Frequently, the advertisements are used to express support or opposition to a political philosophy or legislative program. In other instances, they are used to criticize the performance of an incumbent.

It is not necessary to allow such groups access to a broadcast station. The Commission has reasoned that no group has a general right of access. The only exception deals with individual federal candidates. The Commission has specifically approved a policy of refusing time to any PAC during the political campaign season regardless of views expressed. It falls within a licensee's editorial discretion as to whether any specific PAC spot should be accepted. Thus, permitting one PAC to air a spot does not open the door to all others (from a strictly legal standpoint, that is—public perception of fair play is an entirely different, and potentially a more serious, matter).

If you do choose to accept issue advertising, each proposed sponsor should complete an Agreement Form similar to the model included as Appendix D. For issue ads that relate to any political matter of national importance (including any legally qualified candidate, any election to Federal office or any national legislative issue of public importance) the same record-keeping applies as to candidate advertising, as outlined in section XII of this manual.

Should a licensee choose to run PAC spots, the question arises as to what obligations would be triggered. The Fairness Doctrine is no longer applicable. However a PAC spot directed against an incumbent who has not yet declared his candidacy for reelection could have triggered the personal attack rules while they were in effect, and possibly libel or slander liability since only a "use" protects a broadcaster. To guard against these problems, a licensee is free to accept or reject an issue advertisement based upon whether its content could trigger additional obligations or liability.

A further concern is whether a PAC can claim a right of reply to a candidate or his supporters. For example, if anti-labor representative X buys time to advance his candidacy for election, can a union PAC claim a right to reply to criticize his record? This point has never been addressed by the Commission, but the answer seems to be no, since a PAC, by its very nature, generally cannot be considered the supporter or authorized representative of an opposing candidate.

XVIII. News Distortion

The Commission's present standards for considering news distortion complaints still rest upon a handful of cases centered upon controversy over network coverage of the 1969 Democratic Convention and CBS's "Selling of the Pentagon" and "Hunger in America" television exposés. At that time, the Commission proceeded from the premise that "rigging or slanting the news is a heinous act against the public interest—indeed there is no act more harmful to the public's ability to handle its affairs." Although the Commission undertook its own investigation of the convention coverage, it soon adopted a policy of refusing to take direct action, instead referring the complaint to the licensee for internal investigation and proper handling. In an extreme case, the Commission held out the possibility of forfeiture against the licensee.

News Editing

Two practices in particular have proven troublesome. The first is the editing of interview responses, ostensibly to "tighten up" a rambling answer. An extreme example was revealed in a 1984 case involving a CBS report on automobile accidents staged for the purpose of defrauding insurance companies. There, a former participant in such a scheme was asked a simple question, to which his broadcast answer was a simple "yes." The unedited transcripts of the interview, however, revealed the actual answer to have been equivocal but generally negative. Even so, the Commission was willing to write the incident off as a legitimate exercise of journalistic judgment.

News Staging

The other focal point of many distortion complaints is that of staging an event - that is, portraying an event that did not occur or reenacting an event without clear identification as such. In the "Hunger in America" investigation, CBS was criticized for having portrayed an infant dying of starvation, when in fact the depicted victim was prematurely born, not undernourished, and expiring of natural causes. In a more recent incident, jail employees were cast as inmates in order to illustrate prison conditions in which actual prisoners could not be photographed. In that event (1981), the Commission carved out a broad exception to its general policy in order to permit staging that is relatively minor and incidental to the program as a whole.

The Commission's modern stand with respect to all of these matters is to avoid involvement in editorial judgments and to assume an honest mistake unless the complainant presents direct evidence that the broadcaster had a deliberate intent to distort the news. To satisfy this standard requires testimony of an insider having direct personal knowledge of orders to falsify the news from the licensee, top management or news management. This is an extremely difficult burden to meet, and in fact was satisfied in only a single reported case, and that was in 1949.

The Commission will not infer a deliberate intent to distort from the mere falsity of broadcast items or from circumstantial evidence of a broadcaster's knowledge of falsity. An illustration of the lengths to which the Commission will resort to avoid a finding of news distortion is the famous case involving CBS's "60 Minutes" accusation that General Westmoreland ordered enemy body counts to be exaggerated. CBS's own investigation acknowledged that interviewee statements contradictory to a "conspiracy" premise were deliberately suppressed, interviewees were prepared for interviews in violation of CBS's news gathering standards, interviews with persons who refuted the "conspiracy" premise were harsher in tone than supportive ones, the audience was not informed that a principal interviewee had been paid a substantial consulting fee, and the deceptive juxtaposition of various interview segments had created false impressions. Even then, the Commission found no intention to distort.

It is clear from this and other recent cases that the Commission leans over backward to find a lack of deliberate intent unless confronted with direct evidence. Even so, it is important that upon receiving responsible complaints a licensee undertakes full investigation and correct any errors through on-air retractions, disciplinary measures, and other appropriate actions. It is in the court of public opinion that such matters are often weighed.

XIX. Conclusion

The political broadcasting rules can be dangerous, but the first step towards staying out of trouble is familiarity with the Commission's rules through this guide and other sources. Make sure that all personnel who are involved in any way with the sale of political time are familiar with the rules. To minimize the potential for errors and rule violations, try to limit the number of persons who have responsibility for political advertising sales.

What to Do If There is a Complaint

If a complaint is received from or on behalf of a candidate, contact legal counsel immediately. Some candidates or their attorneys may request extensive information beyond what is required to be in the political file. This information should not be provided without legal consultation. The candidate may be requested to be specific as to the dates, times and circumstances of the alleged overcharge.

The Commission strongly urges parties to settle disputes privately. In negotiating and formalizing any settlement of a dispute, care must be taken to ensure that the understanding is clear and legally effective.

It should be noted in closing that political broadcasting is an area of law subject to rapid change. Moreover, it is not always apparent how to apply the principles we have described to specific factual situations. Therefore, it is essential to consult with us concerning specific problems or questions that may arise.

APPENDICES

APPENDIX A

Political Broadcasting Rules

(Important Note: These FCC rules have not yet been updated to reflect the provisions of the Bipartisan Campaign Reform Act of 2002. Therefore, these rules are not a reliable guide to all of the requirements and procedures outlined in this manual.)

73.1212 Sponsorship identification; list retention; related requirements

(a) When a broadcast station transmits any matter for which money, service, or other valuable consideration is either directly or indirectly paid or promised to, or charged or accepted by such station, the station, at the time of the broadcast, shall announce:

(1) that such matter is sponsored, paid for, or furnished, either in whole or in part, and

(2) by whom or on whose behalf such consideration was supplied: provided, however, that "service or other valuable consideration" shall not include any service or property furnished either without or at a nominal charge for use on, or in connection with, a broadcast unless it is so furnished in consideration for an identification of any person, product, service, trademark, or brand name beyond an identification reasonably related to the use of such service or property on the broadcast.

(i) For the purposes of this section, the term "sponsored" shall be deemed to have the same meaning as "paid for."

(ii) In the case of any television political advertisement concerning candidates for public office, the sponsor shall be identified with letters equal to or greater than four (4) percent of the vertical picture height that air for not less than four (4) seconds.

(b) The licensee of each broadcast station shall exercise reasonable diligence to obtain from its employees, and from other persons with whom it deals directly in connection with any matter for broadcast, information to enable such licensee to make the announcement required by this section.

(c) In any case where a report has been made to a broadcast station as required by Section 507 of the Communications Act of 1934, as amended, of circumstances which would have required an announcement under this section had the consideration been received by such broadcast station, an appropriate announcement shall be made by such station.

(d) In the case of any political broadcast matter or any broadcast matter involving the discussion of a controversial issue of public importance for which any film, record, transcription, talent, script, or other material or service of any kind is furnished, either directly or indirectly, to a station as an inducement for broadcasting such matter, an announcement shall be made both at the beginning and conclusion of such broadcast on which such material or service is used that such film, record, transcription, talent, script, or other material or service has been furnished to such station in connection with the transmission of such broadcast matter: provided, however, that in the case of any broadcast of 5 minutes' duration or less, only one such announcement need be made either at the beginning or conclusion of the broadcast.

(e) The announcement required by this section shall, in addition to stating the fact that the broadcast matter was sponsored, paid for or furnished, fully and fairly disclose the true identity of the person or persons, or corporation, committee, association or other unincorporated group, or other entity by whom or on whose behalf such payment is made or promised, or from whom or on whose behalf such services or other valuable consideration is received, or by whom the material or services referred to in paragraph (d) of this section are furnished. Where an agent or other person or entity contracts or otherwise makes arrangements with a station on behalf of another, and such fact is known or by the exercise of reasonable diligence, as specified in paragraph (b) of this section, could be known to the station, the announcement shall disclose the identity of the person or persons or entity on whose behalf such agent is acting instead of the name of such agent. Where the material broadcast is political matter or matter involving the discussion or a controversial issue of public importance and a corporation, committee, association or other unincorporated group, or other entity is paying for or furnishing the broadcast matter, the station shall, in addition to making the announcement required by this section, require that a list of the chief executive officers or members of the executive committee or of the board of directors of the corporation, committee, association or other unincorporated group, or other entity shall be made available for public

inspection at the location specified by the licensee under §73.3526 of this chapter. If the broadcast is originated by a network, the list may, instead, be retained at the headquarters office of the network or at the location where the originating station maintains its public inspection file under §73.3526 of this chapter. Such lists shall be kept and made available for a period of two years.

§73.1940 Legally qualified candidates for public office.

(a) A legally qualified candidate for public office is any person who:

(1) Has publicly announced his or her intention to run for nomination or office;

(2) Is qualified under the applicable local, State or Federal law to hold the office for which he or she is a candidate; and

(3) Has met the qualifications set forth in either paragraphs (b), (c) (d) or (e) of this section.

(b) A person seeking election to any public office including that of President or Vice President of the United States, or nomination for any public office except that of President or Vice President, by means of a primary, general or special election, shall be considered a legally qualified candidate if, in addition to meeting the criteria set forth in paragraph (a) of this section, that person:

(1) Has qualified for a place on the ballot, or

(2) Has publicly committed himself or herself to seeking election by the write-in method and is eligible under applicable law to be voted for by sticker, by writing in his or her name on the ballot or by other method, and makes a substantial showing that he or she is a bona fide candidate for nomination or office.

(c) A person seeking election to the office of President or Vice President of the United States shall, for the purposes of the Communications Act and the rules thereunder, be considered legally qualified candidates only in those States or territories (or the District of Columbia) in which they have met the requirements set forth in paragraphs (a) and (b) of this section: except, that any such person who has met the requirements set forth in paragraphs (a) and (b) of this section in at least 10 States (or 9 and the District of Columbia) shall be considered a legally qualified candidate for election in all States, territories and the District of Columbia for purposes of this Act.

(d) A person seeking nomination to any public office, except that of President or Vice President of the United States, by means of a convention, caucus or similar procedure, shall be considered a legally qualified candidate if, in addition to meeting the requirements set forth in paragraph (a) of this section, that person makes a substantial showing that he or she is a bona fide candidate for such nomination: except, that no person shall be considered a legally qualified candidate for nomination by the means set forth in this paragraph prior to 90 days before the beginning of the convention, caucus or similar procedure in which he or she seeks nomination.

(e) A person seeking nomination for the office of President or Vice President of the United States shall, for the purposes of the Communications Act and the rules thereunder, be considered a legally qualified candidate only in those States or territories (or the District of Columbia) in which, in addition to meeting the requirements set forth in paragraph (a) of this section.

(1) He or she, or proposed delegates on his or her behalf, have qualified for the primary or Presidential preference ballot in that State, territory or the District of Columbia, or

(2) He or she has made a substantial showing of a bona fide candidacy for such nomination in that State, territory or the District of Columbia: except, that any such person meeting the requirements set forth in paragraphs (a)(1) and (2) of this section in at least 10 States (or nine and the District of Columbia) shall be considered a legally qualified candidate for nomination in all States, territories and the District of Columbia for purposes of this act.

(f) The term "substantial showing" of a bona fide candidacy as used in paragraphs (b), (d) and (e) of this section means evidence that the person claiming to be a candidate has engaged to a substantial degree in activities commonly associated with political campaigning. Such activities normally would include making campaign speeches, distributing campaign literature, issuing press releases, maintaining a campaign committee, and establishing campaign headquarters (even though the headquarters in some instances might be the residence of the candidate or his or her campaign manager). Not all of the listed activities are necessarily required in each case to demonstrate a substantial showing, and there may be activities not listed herein which would contribute to such a showing.

§73.1941 Equal opportunities.

(a) General requirements. Except as otherwise indicated in §73.1944, no station licensee is required to permit the use of its facilities by any legally qualified candidate for public office, but if any licensee shall permit any such candidate to use its facilities, it shall afford equal opportunities to all other candidates for that office to use such facilities. Such licensee shall have no power of censorship over the material broadcast by any such candidate. Appearance by a legally qualified candidate on any:

(1) bona fide newscast;

(2) bona fide news interview;

(3) bona fide news documentary (if the appearance of the candidate is incidental to the presentation of the subject or subjects covered by the news documentary); or

(4) on-the-spot coverage of bona fide news events (including, but not limited to political conventions and activities incidental thereto) shall not be deemed to be use of a broadcasting station. (Section 315(a) of the Communications Act.)

(b) Uses. As used in this section and §73.1942, the term "use" means a candidate appearance (including by voice or picture) or political advertisement is not exempt under §73.1941(a)(1)-(4)

(c) Timing of request. A request for equal opportunities must be submitted to the licensee within 1 week of the day on which the first prior use giving rise to the right of equal opportunities occurred; provided, however, that where the person was not a candidate at the time of such first prior use, he or she shall submit his or her request within 1 week of the first subsequent use after he or she has become a legally qualified candidate for the office in question.

(d) Burden of proof. A candidate requesting equal opportunities of the licensee or complaining of noncompliance to the Commission shall have the burden of proving that he or she and his or her opponent are legally qualified candidates for the same public office.

(e) Discrimination between candidates. In making time available to candidates for public office, no licensee shall make any discrimination between candidates in practices, regulations, facilities, or services for or in connection with the service rendered pursuant to this part, or make or give any preference to any candidate for public office or subject any such candidate to any prejudice or disadvantage; nor shall any licensee make any contract or other agreement which shall have the effect of permitting any legally qualified candidate for any public office to broadcast to the exclusion of other legally qualified candidates for same public office.

§73.1942 Candidate rates.

(a) Charges for use of stations. The charges, if any, made for the use of any broadcasting station by any person who is a legally qualified candidate for any public office in connection with his or her campaign for nomination for election, or election, to such office shall not exceed:

(1) During the 45 days preceding the date of a primary or primary runoff election and during the 60 days preceding the date of a general or special election in which such person is a candidate, the lowest unit charge of the station for the same class and amount of time for the same period.

(i) A candidate shall be charged no more per unit than the station charges its most favored commercial advertiser for the same classes and amounts of time for the same periods. Any station practices offered to commercial advertisers that enhance the value of advertising must be disclosed and made available to candidates on equal terms. Such practices include but are not limited to any discount privileges that affect the value of advertising, such as bonus spots, time-sensitive make goods, preemption priorities, or any other factors that enhance the value of the announcement.

(ii) The Commission recognizes non-preemptible, preemptible with notice, immediately preemptible and run-of-schedule as distinct classes of time.

(iii) Stations may establish and define their own reasonable classes of immediately preemptible time so long as differences between such classes are based on one or more demonstratable benefits associated with each class and are not based solely upon price or identity of the advertiser. Such demonstratable benefits include, but are not limited to, varying levels of preemption protection, scheduling flexibility, or associated privileges, such as guaranteed time-sensitive make goods. Stations may not use class distinctions to defeat the purpose of the lowest unit charge requirement. All classes must be fully disclosed and made available to candidates.

(iv) Stations may establish reasonable classes of preemptible with notice time so long as they clearly define such classes, fully disclose them and make them available to candidates.

(v) Stations may treat non-preemptible and fixed position as distinct classes of time provided that stations articulate clearly the differences between such classes, fully disclose them, and make them available to candidates.

(vi) Stations shall not establish a separate, premium-priced class of time sold only to candidates. Stations may sell higher priced non-preemptible or fixed time to candidates if such a class of time is made available on a bona fide basis to both candidates and commercial advertisers, and provided such class is not functionally equivalent to any lower priced class of time sold to commercial advertisers.

(vii) (Reserved)

(viii) Lowest unit charge may be calculated on a weekly basis with respect to time that is sold on a weekly basis, such as rotations through particular programs or dayparts. Stations electing to calculate the lowest unit charge by such a method must include in that calculation all rates for all announcements scheduled in the rotation, including announcements aired under long-term advertising contracts. Stations may implement rate increases during election periods only to the extent that such increases constitute "ordinary business practices," such as seasonal program changes or changes in audience ratings.

(ix) Stations shall review their advertising records periodically throughout the election period to determine whether compliance with this section requires that candidates receive rebates or credits. Where necessary, stations shall issue rebates or credits promptly

(x) Unit rates charged as part of any package, whether individually negotiated or generally available to all advertisers, must be included in the lowest unit charge calculation for the same class and length of time in the same time period. A candidate cannot be required to purchase advertising in every program or daypart in a package as a condition for obtaining package unit rates

(xi) Stations are not required to include non-cash promotional merchandising incentives in lowest unit charge calculations; provided, however, that all such incentives must be offered to candidates as part of any purchases permitted by the licensee. Bonus spots, however, must be included in the calculation of the lowest unit charge calculation.

(xii) Make goods, defined as the rescheduling of preempted advertising, shall be provided to candidates prior to election day if a station has provided a time-sensitive make good during the year preceding the pre-election periods, respectively set forth in paragraph (a)(1) of this section to any commercial advertiser who purchased time in the same class.

(xiii) Stations must disclose and make available to candidates any make good policies provided to commercial advertisers. If a station places a make good for any commercial advertiser or other candidate in a more valuable program or daypart, the value of such make good must be included in the calculation of the lowest unit charge for that program or daypart

(2) At any time other than the respective periods set forth in paragraph (a)(1) of this section, stations may charge legally qualified candidates for public office no more than the charges made for comparable use of the station by commercial advertisers. The rates, if any, charged all such candidates for the same office shall be uniform and shall not be rebated by any means, direct or indirect. A candidate shall be charged no more than the rate the station would charge for comparable commercial advertising. All discount privileges otherwise offered by a station to commercial advertisers must be disclosed and made available upon equal terms to all candidates for public office.

(b) If a station permits a candidate to use its facilities, the station shall make all discount privileges offered to commercial advertisers, including the lowest unit charges for each class and length of time in the same time period and all corresponding discount privileges, available upon equal terms to all candidates. This duty includes an affirmative duty to disclose to candidates information about rates, terms, conditions and all value enhancing discount privileges offered to commercial advertisers. Stations may use reasonable discretion in making the disclosure; provided, however, that the disclosure includes, at a minimum, the following information:

(1) a description and definition of each class of time available to commercial advertisers sufficiently complete to allow candidates to identify and understand what specific attributes differentiate each class;

(2) a description of the lowest unit charge and related privileges (such as priorities against preemption and make goods prior to specific deadlines) for each class of time offered to commercial advertisers;

(3) a description of the station's method of selling preemptible time based upon advertiser demand, commonly known as the "current selling level," with the stipulation that candidates will be able to purchase at these demand-generated rates in the same manner as commercial advertisers;

(4) an approximation of the likelihood of preemption for each kind of preemptible time; and

(5) an explanation of the station's sales practices, if any, that are based on audience delivery, with the stipulation that candidates will be able to purchase this kind of time, if available to commercial advertisers.

(c) Once disclosure is made, stations shall negotiate in good faith to actually sell time to candidates in accordance with the disclosure.

(d) This rule (§73.1942) shall not apply to any station license for noncommercial operation.

§73.1943 Political file.

(a) Every licensee shall keep and permit public inspection of a complete and orderly record (political file) of all requests for broadcast time made by or on behalf of a candidate for public office, together with an appropriate notation showing the disposition made by the licensee of such requests, and the charges made, if any, if the request is granted. The "disposition" includes the schedule of time purchase, when spots actually aired, the rates charged, and the classes of time purchased.

(b) When free time is provided for use by or on behalf of candidates, a record of the free time provided shall be placed in the political file.

(c) All records required by this paragraph shall be placed in the political file as soon as possible and shall be retained for a period of two years. As soon as possible means immediately absent unusual circumstances.

§73.1944 Reasonable access.

(a) Section 312(a)(7) of the Communications Act provides that the Commission may revoke any station license or construction permit for willful or repeated failure to allow reasonable access to, or to permit purchase of, reasonable amounts of time for the use of a broadcasting station by a legally qualified candidate for Federal elective office on behalf of his candidacy

(b) Weekend access. For purposes of providing reasonable access, a licensee shall make its facilities available for use by federal candidates on the weekend before the election if the licensee has provided similar access to commercial advertisers during the year preceding the relevant election period. Licensees shall not discriminate between candidates with regard to weekend access.

APPENDIX B

Sample Political Policy Statement and Rate Guide

1. Applicability: These policies apply only to legally qualified candidates for public office or their authorized campaign organizations to promote their candidacy; they are not applicable to political action committees or to non-candidate "issue" advertising.

2. Access:

   a) Reasonable access will be provided to all legally qualified federal candidates during the 45 and 60-day periods before a primary/general election. While candidates may request specific programming, the Station reserves the exclusive right to determine the amount of time and program availability to particular candidates.

   b) (No political time will be sold in news programming) or [Political time in news programming will only be sold in "interior pods" (non-adjacent to the news programming)] or (Political time will be sold only in the following news programming only: _____ _____).

3. Identification: All ads must comply with the audio and visual identification requirements of §317 of the Communications Act. Should candidate ads not contain the proper identification, the Station reserves the right to add the appropriate material, without providing additional time. Production costs will be billed at the Station's usual rates.

4. Orders: Orders for political time will not be considered firm until the following have been provided:

   a) Completed and signed Agreement Form for Political Candidates.

   b) Net cash-in-advance payment.

   c) Where the purchase is made by a corporation, committee, association or other unincorporated group, a list of the entities' chief executive committee or board of directors.

   d) Where doubt exists, the Station may require satisfactory proof that the candidate is "legally qualified," as that term is defined by the FCC.

   e) Where doubt exists, the Station may require satisfactory proof that the purchaser is authorized to buy time for the candidate.

   f) Advance orders for schedules of political advertising proof that the purchaser is authorized to buy time for the candidate.

   g) Commercial facilities (tape, film, slides, or copy), along with written instructions for their use, should be submitted to the Station as soon as possible to ensure proper airing. All instructions for airing of facilities should be in writing. Changes to these instructions should be in writing to the Station (by letter, FAX or telegram) prior to the changes being made. Film or tape should be received in sufficient time to permit confirmation or compliance with sponsorship identification requirements and will broadcast technical standards.

   h) Deadlines for all commercial material, time orders, and contract changes are as follows:

      2:00 PM Thursday - for Sunday's log

      4:00 PM Thursday - for Monday's log

      4:00 PM Friday - for Tuesday's log

      4:00 PM Monday - For Wednesday's log

      4:00 PM Tuesday - For Thursday's log

      2:00 PM Wednesday - for Friday's log

      4:00 PM Wednesday - for Saturday's log

Failure by a political advertiser to fulfill all requirements in advance of some deadlines may result in preemption of some or all announcements or programs previously cleared.

5. Production: Station facilities may be utilized for the production of political announcements or programs, subject to available production time (rates upon request).

Production charges are handled separately from the time charges. Agencies and/or candidates who schedule production time at the Station are required to provide a check for payment of accrued charges following the production session. No spots will air, nor will any dubs be ordered, until a check is received for the correct amount. No Station news talent is available for political advertising purposes, on-camera or voice-over.

6. Availabilities:

a) Legally qualified candidates may purchase time on the attached chart subject to availabilities. The base availability is a 30 second ad (including sponsorship identification). Ad time is available in other lengths of 10, 15, 60, 90 or 120 seconds.

b) Candidates should be aware that, unless a contrary result is demanded by statutory requirements, orders for the purchase of time made after 12:00 noon on the Thursday preceding election day may not be filled due to lack of availabilities. The earlier an order is placed, the greater the scheduling option will be.

c) The Station will place all orders as to day and time, subject to availabilities. Due to potential "equal opportunities" obligations for opposing candidates, certain time periods may be unavailable for candidates in other political races.

d) Request for program time, including lengths of 5 minutes, 30 minutes and 60 minutes, will be considered on an individual basis. No promotional announcements (aside from a candidate's separately purchased spot uses) will be scheduled to promote political programs.

7. Rates:

a) Rates fluctuate on a (weekly) or (daily) basis according to the class of time ordered. Quoted rates from availability requests are for 30-second ads. Rates for other lengths of spots will be quoted upon request.

b) Each separate class of time is offered to candidates at its lowest unit charge: the lowest clearing rate of the particular class of time ordered by the candidate for the time period when the ad is broadcast. The Station will provide its best, good faith assessment of the lowest unit charge for each class upon request.

c) For "preemptible" classes, candidates may purchase ads at the lowest predicted unit charge or at a higher rate so as to decrease the potential for preemption.

d) In the instance where political time is not sold to candidates during news programming, the lowest unit charge for a news adjacency time period will be established by the rate for the class of time purchases as if it were in the news program.

8. Rebates: In the event advertising time is sold for a particular class and for a particular time period and is broadcast at rates lower than the rate paid by the candidate, the candidate will be afforded the benefit of the lower rate either by ways of a rebate or as credit against future purchases, at the option of the candidate.

9. Make goods: The Station will use its best efforts to provide "make good" spots prior to the election for candidate "use" spots that are preempted due to technical problems or because of the nature of the time purchased. Although the Station's policy is to offer all candidates make goods before the election, it cannot guarantee to any advertiser that the make goods can be provided in the time period or rotation originally ordered. If inventory constraints preclude such identical scheduling, the Station will offer make goods of equivalent value. If these are not acceptable to the advertiser, the Station will provide credits or refunds for preempted spots.

10. Packages: Combinations of classes are available. Each ad ordered will reflect the appropriate class of time for lowest unit charge calculation purposes. (e.g. 10 class 2a ads combined with 10 class 4c ads may be purchased and each ad will reflect its own class.) Rates for each ad in the package will be allocated for each class by the Station.

11. Value Added Features: If scheduled during the campaign time period, candidates may purchase value-added elements in conjunction with airtime including, but not limited to, "Combination print ads" in direct mail Station advertisements or magazine supplements; "Non-broadcast event sponsorships"; or "Non-cash promotional incentives" (bonus to the advertiser if certain prospective advertising levels are reached).

12. Rotations: Ads may be purchased individually or in designated rotations among several designated days or time periods.

CLASSES OF TIME

	Program Specific	M-F	M-F	M-F	M-F	M-F	M-Su	M-Su	M-Su	Sa-Su	Sa-Su	Day Specific	Orbit*	ROS*	Aud. Reach***
Fixed	1														
Non-Preemptible	2	2a	2b	2c	2d	2e	2f	2g	2h	2i	2j				
Preemptible with Notice	3	3a	3b	3c	3d	3e	3f	3g	3h	3i	3j				
Immediately Preemptible	4	4a	4b	4c	4d	4e	4f	4g	4h	4i	4j	4k	4l	4m	4n
Candidate Discount	5	5a	5b	5c	5d	5e	5f	5g	4h	4i	4j				

(Each grid block above represents a separate class of time.)

KEY

Fixed - Ads scheduled to air in a particular program at a precise time or break. These ads may not be preempted in favor of any other ad and will air as scheduled absent unforeseen program changes or technical difficulties.

Non-Preemptible - Ads scheduled to air at the Station's discretion in the particular program, time period, day part or day specified by the advertiser. These ads may not be preempted in favor of any other ad and will air as scheduled absent unforeseen or technical difficulties.

Preemptible With Notice - Ads scheduled to air at the Station's discretion in the particular program, time period, day part or day specified by the advertiser. These ads may be preempted in favor of other ads upon _____ days notice to the advertiser. If notice of preemption is not given by the Station, the ad becomes non-preemptible. The Station will give its best, good faith assessment of the likelihood of preemption at the time of the request for any particular rate level requested.

Immediately Preemptible - Ads scheduled to air at the Station's discretion in the particular program, time period, day part, or day specified by the advertiser. These ads may be preempted in favor of other ads [regardless of the price paid of the other ad] [or] [purchased at a higher rate] The Station will give its best, good faith assessment of the likelihood of preemption at the time of the request for any particular rate level requested.

Candidate Discount - Ads scheduled to air at the Station's discretion in the particular program, time period, day part or day specified by a political candidate or his/her authorized representative 45 days prior to a primary election or 60 days prior to a general election. These ads may not be preempted in favor of any other ad and shall be priced at [a lower rate than the highest clearing "Immediately Preemptible" rate for the time period designated] [or] [the average unit rate for the program in which the ad is broadcast].

Other Classes - The Station offers "Per Inquiry" and "Direct Response" ads which are scheduled to air at the Station's discretion in the particular program, time period, day part, or day specified by the advertiser where payment is tied to the number of inquiries received regarding the ad. Make goods are not available. Rates and other conditions of sue are available upon request.

***Orbit** - Programming of a like kind such as "News," "Children's," or "Sports."

****ROS** - "Run of Schedule" - A form of Immediately Preemptible time in which the station has the widest discretion to air ads. Make goods are not available.

*****Aud. Reach – "Audience Reach"** - A form of Immediately Preemptible time in which the Station has discretion in airing ads so that a targeted rating, share or demographic level designated by the advertiser is achieved during a predetermined period. Make goods are not available.

APPENDIX C

Candidate Agreement Form for Political Advertisements

Station and Location: _____

Date: _____

I, _____,

(Check One) ☐ being

☐ on behalf of _____ _____,

a legally qualified candidate of the ___ _____ political party

for the office of _____

in the _____election to be held on: _____

do hereby request station time as follows:

Date of Broadcast	Class of Time	Time of Day, Rotation or Package	Length	Rate

I represent that the candidate named above has authorized the announcements ordered above to be broadcast pursuant to the terms of this agreement. Each announcement on behalf of a candidate for Federal office shall include a statement read by the candidate that shall identify the candidate by name and shall state that the candidate approved the broadcast.

In addition to the foregoing, any television broadcast for Federal office must conclude with at least a four-second segment consisting of either an unobscured full-screen view of the candidate making the required statement or the candidate's voice accompanied by a clearly identifiable photographic or similar image of the candidate, together with a clearly readable printed text of the statement.

The payment for the above described broadcast time has been furnished by the following:

_____

You are authorized to announce the time as paid for by such person or entity. The entity or person furnishing the payment for this announcement is either a legally qualified candidate or an authorized committee/organization of the legally qualified candidate.

Treasurer's name of the candidate's authorized committee:_____

This application, whether accepted or rejected, will remain available for public inspection for a period of at least two years.

☐ Check here if Lowest Unit Rates are requested for broadcasts on behalf of a candidate for Federal office within 60 days of a general election or 45 days of a primary election. If this box is checked, then I certify that any broadcast containing a direct reference to another candidate for the same office will include in the candidate announcement described above identification of the office sought or, if a televised announcement, a statement that the candidate's authorized committee paid for the broadcast. I understand that a failure to include an appropriate candidate statement within the announcement may result in forfeiture of entitlement to lowest unit rates for the remainder of the campaign.

☐ I hereby acknowledge that I have received and understand the station's rate guide titled

_____, issued on _____2004

Signed by: Candidate or Authorized Committee

_____/_____ _____
Date Signature and Title

Signed by: Station Representative

☐Accepted ☐Rejected ☐Accepted in part (specify portions accepted):

_____/_____ _____
Date Signature and Title

Extra Form for Federal Candidate or Equal Opportunity Users Whose Representatives Refuse to Acknowledge Receipt of the Station's Rate Disclosure

The following candidate or agent seeking Federal office or an equal opportunity completed a "Candidate Agreement Form for Political Advertisements" but would not acknowledge that he or she received and understood the station's rate guide, as indicated thereon. I hereby certify that he or she did in fact receive a copy of that rate guide and was apprised of the station's normal and customary selling practices before completing and signing such form.

_____

Name of Candidate or Agent

_____

Date

_____

Signature of Station Representative

_____

Name and Title of Station Representative

Actual Schedule of Broadcasts

This form should be completed after broadcasts of candidate advertising. Include all makegoods and specify reasons for makegoods. List each broadcast separately.

Date of Broadcast	Class of Time	Time of Day, Rotation or Package	Length	Rate

If any lower-priced spots of the same length and class ran in the same periods as those ordered (or, if in error, a lower-priced spot of a different class ran that was not meant to run in the same period), list the dates and times, the price differential and the nature, amounts and timing of all make-goods and rebates:

Actual Schedule Run Summaries or invoices can be attached to this form showing the following:

1. Actual date, exact time, class and charge per spot;
2. Date and exact time for all make-goods (if any) and reasons for them; and
3. Exact date, time, class, and dollar amount for each rebate given (if any).

All of the foregoing information must be placed in the station's political file as soon as possible. If this information is only generated less frequently than daily, the file should include a contact name that can provide specific spot airing times.

APPENDIX D

Agreement Form for Non-Candidate/Issues Advertisements

Station and Location: _____

Date: _____

I, _____,

hereby request station time as follows:

Date of Broadcast	Class of Time	Time of Day, Rotation or Package	Length	Rate

This airtime will be used by: _____

This airtime will be used to address the following issue(s):

Does this programming (in whole or in part) communicate "a message relating to any political matter of national importance," including a legally qualified candidate, any election to Federal office or a national legislative issue?

☐Yes ☐No

If the answer to the foregoing question is "yes," then a copy of this completed request must be retained by this station and made publicly available.

I verify that payment for the above described broadcast time has been provided by:

_____

If the payor for this broadcast time is any entity other than an individual person, below are the names, addresses and offices of the chief executive officers or members of the executive committee or members of the board of directors of that entity. (A separate list may be attached if necessary or more convenient.)

_____

_____

_____

_____

If the undersigned is not the appropriate contact person for the advertiser, please provide the name, address and phone number for such contact person:

_____

The advertiser agrees to indemnify and hold the station harmless for any damages or liability, including reasonable attorney's fees, that may ensue from the broadcast of the requested announcement(s).

For each of the above-listed announcement(s), the advertiser agrees to deliver an accurate script, transcript, or tape to the station at least ____ hours before the scheduled time of the first broadcast.

All announcements to be broadcast over radio are to contain an audio statement as follows: "(Name of advertiser) is responsible for content of this advertising." If televised, the statement must be conveyed by an unobscured, full-screen view of a representative of the advertiser making the statement, or by a representative in voice-over, and also must appear in a clearly readable manner with a reasonable degree of color contrast between the background and the printed statement, for a period of at least four seconds.

Issue Advertiser Signature:

_____ _____ (____)_____

Signature of Advertiser | Date | Phone Number

_____

Address

_____

If not an individual, specify relationship of signatory to the advertiser

Station Representative Signature:

☐Accepted ☐Rejected ☐Accepted in part (specify portions accepted):

_____ _____ _____

Signature of Station Representative | Printed Name and Title | Date

Actual Schedule of Broadcasts

To be completed after broadcast of all issue advertisements that communicate a message relating to any political matter of national importance. List each broadcast separately. Include all makegoods and specify reasons for each.

Date of Broadcast	Class of Time	Time of Day, Rotation or Package	Length	Rate

Actual Schedule Run Summaries or invoices can be attached to this form showing the following:

1. Actual date, exact time, class and charge per spot;
2. Date and exact time for all make-goods (if any) and reasons for them; and
3. Exact date, time, class, and dollar amount for each rebate given (if any).

All of the foregoing information must be placed in the station's political file as soon as possible. If this information is only generated less frequently than daily, the file should include a contact name that can provide specific spot airing times.

WASHINGTON, DC
Seventh Floor
1401 Eye Street, N.W.
Washington, DC 20005
(202) 857-4400

GEORGIA
One Atlantic Center
Suite 3500
1201 West Peachtree Street
Atlanta, GA 30309
(404) 872-7000

Suite 404
2296 Henderson Mill Road, NE
Atlanta, GA 30345-2739
(770) 492-9030

NORTH CAROLINA
3500 One Wachovia Center
301 South College Street
Charlotte, NC 28202-6025
(704) 331 4900

Suite 1900
300 North Greene Street
Post Office Box 21104
Greensboro, NC 27401
(336) 574-8030

Suite 2100
150 Fayetteville Street Mall
Post Office Box 831
Raleigh, NC 27602
(919) 755-2100

Suite 400
2530 Meridian Parkway
Durham, NC 27713
Post Office Box 13069
Research Triangle Park, NC 27709
(919) 484-2300

One West Fourth Street
Winston-Salem, NC 27101
(336) 721-3600

SOUTH CAROLINA
700 Poinsett Plaza
104 South Main Street
Post Office Box 10208
Greenville, SC 29603-0208
(864) 255-5400
Spartanburg: (864) 579-7447

VIRGINIA
Fourth Floor
8065 Leesburg Pike
Tysons Corner, VA 22182-2738
(703) 790-3310

WOMBLE CARLYLE SANDRIDGE & RICE
A PROFESSIONAL LIMITED LIABILITY COMPANY

www.wcsr.com
04.0026.1

Attachment B

Pike & Fischer, Inc.

Communications Regulation

Call 1-800-255-8131

Email Customer Care

§73.1942 Candidate rates.

(a) Charges for use of stations. The charges, if any, made for the use of any broadcasting station by any person who is a legally qualified candidate for any public office in connection with his or her campaign for nomination for election, or election, to such office shall not exceed:

(1) During the 45 days preceding the date of a primary or primary runoff election and during the 60 days preceding the date of a general or special election in which such person is a candidate, the **lowest unit charge** of the station for the same class and amount of time for the same period.

(i) A candidate shall be charged no more per unit than the station charges its most favored commercial advertisers for the same classes and amounts of time for the same periods. Any station practices offered to commercial advertisers that enhance the value of advertising spots must be disclosed and made available to candidates on equal terms. Such practices include but are not limited to any discount privileges that affect the value of advertising, such as bonus spots, time-sensitive make goods, preemption priorities, or any other factors that enhance the value of the announcement.

(ii) The Commission recognizes non-preemptible, preemptible with notice, immediately preemptible and run-of-schedule as distinct classes of time.

(iii) Stations may establish and define their own reasonable classes of immediately preemptible time so long as the differences between such classes are based on one or more demonstrable benefits associated with each class and are not based solely upon price or identity of the advertiser. Such demonstrable benefits include, but are not limited to, varying levels of preemption protection, scheduling flexibility, or associated privileges, such as guaranteed time-sensitive make goods. Stations may not use class distinctions to defeat the purpose of the **lowest unit charge** requirement. All classes must be fully disclosed and made available to candidates.

(iv) Stations may establish reasonable classes of preemptible with notice time so long as they clearly define all such classes, fully disclose them and make them available to candidates.

(v) Stations may treat non-preemptible and fixed position as distinct classes of time provided that stations articulate clearly the differences between such classes, fully disclose them, and make them available to candidates.

(vi) Stations shall not establish a separate, premium-priced class of time sold only to candidates. Stations may sell higher-priced non-preemptible or fixed time to candidates if such a class of time is made available on a bona fide basis to both candidates and commercial advertisers, and provided such class is not functionally equivalent to any lower-priced class of time sold to commercial advertisers.

(vii) [Reserved]

(viii) **Lowest unit charge** may be calculated on a weekly basis with respect to time that is sold on a weekly basis, such as rotations through particular programs or dayparts. Stations electing to calculate the **lowest unit charge** by such a method must include in that calculation all rates for all announcements scheduled in the rotation, including announcements aired under long-term advertising contracts. Stations may implement rate increases during election periods only to the extent that such increases constitute "ordinary business practices," such as seasonal program changes or changes in audience ratings.

(ix) Stations shall review their advertising records periodically throughout the election period to determine whether compliance with this section requires that candidates receive rebates or credits. Where necessary, stations shall issue rebates or credits promptly.

(x) Unit rates charged as part of any package, whether individually negotiated or generally available to all advertisers, must be included in the **lowest unit charge** calculation for the same class and length of time in the same time period. A candidate cannot be required to purchase advertising in every program or daypart in a package as a condition for obtaining package unit rates.

(xi) Stations are not required to include non-cash promotional merchandising incentives in **lowest unit charge** calculations; provided, however, that all such incentives must be offered to candidates as part of any purchases permitted by the licensee. Bonus spots, however, must be included in the calculation of the **lowest unit charge** calculation.

(xii) Make goods, defined as the rescheduling of preempted advertising, shall be provided to candidates prior to election day if a station has provided a time-sensitive make good during the year preceding the pre-election periods, respectively set forth in paragraph (a)(1) of this section to any commercial advertiser who purchased time in the same class.

(xiii) Stations must disclose and make available to candidates any make good policies provided to commercial advertisers. If a station places a make good for any commercial advertiser or other candidate in a more valuable program or daypart, the value of such make good must be included in the calculation of the **lowest unit charge** for that program or daypart.

(2) At any time other than the respective periods set forth in paragraph (a)(1) of this section, stations may charge legally qualified candidates for public office no more than the charges made for comparable use of the station by commercial advertisers. The rates, if any, charged all such candidates for the same office shall be uniform and shall not be rebated by any means, direct or indirect. A candidate shall be charged no more than the rate the station would charge for comparable commercial advertising. All discount privileges otherwise offered by a station to commercial advertisers must be disclosed and made available upon equal terms to all candidates for public office.

(b) If a station permits a candidate to use its facilities, the station shall make all discount privileges offered to commercial advertisers, including the lowest unit charges for each class and length of time in the same time period and all corresponding discount privileges, available upon equal terms to all candidates. This duty includes an affirmative duty to disclose to candidates information about rates, terms, conditions and all value-enhancing discount privileges offered to commercial advertisers. Stations may use reasonable discretion in making the disclosure; provided, however, that the disclosure includes, at a minimum, the following information:

(1) a description and definition of each class of time available to commercial advertisers sufficiently complete to allow candidates to identify and understand what specific attributes differentiate each class;

(2) a description of the **lowest unit charge** and related privileges (such as priorities against preemption and make goods prior to specific deadlines) for each class of time offered to commercial

advertisers;

(3) a description of the station's method of selling preemptible time based upon advertiser demand, commonly known as the "current selling level," with the stipulation that candidates will be able to purchase at these demand-generated rates in the same manner as commercial advertisers;

(4) an approximation of the likelihood of preemption for each kind of preemptible time; and

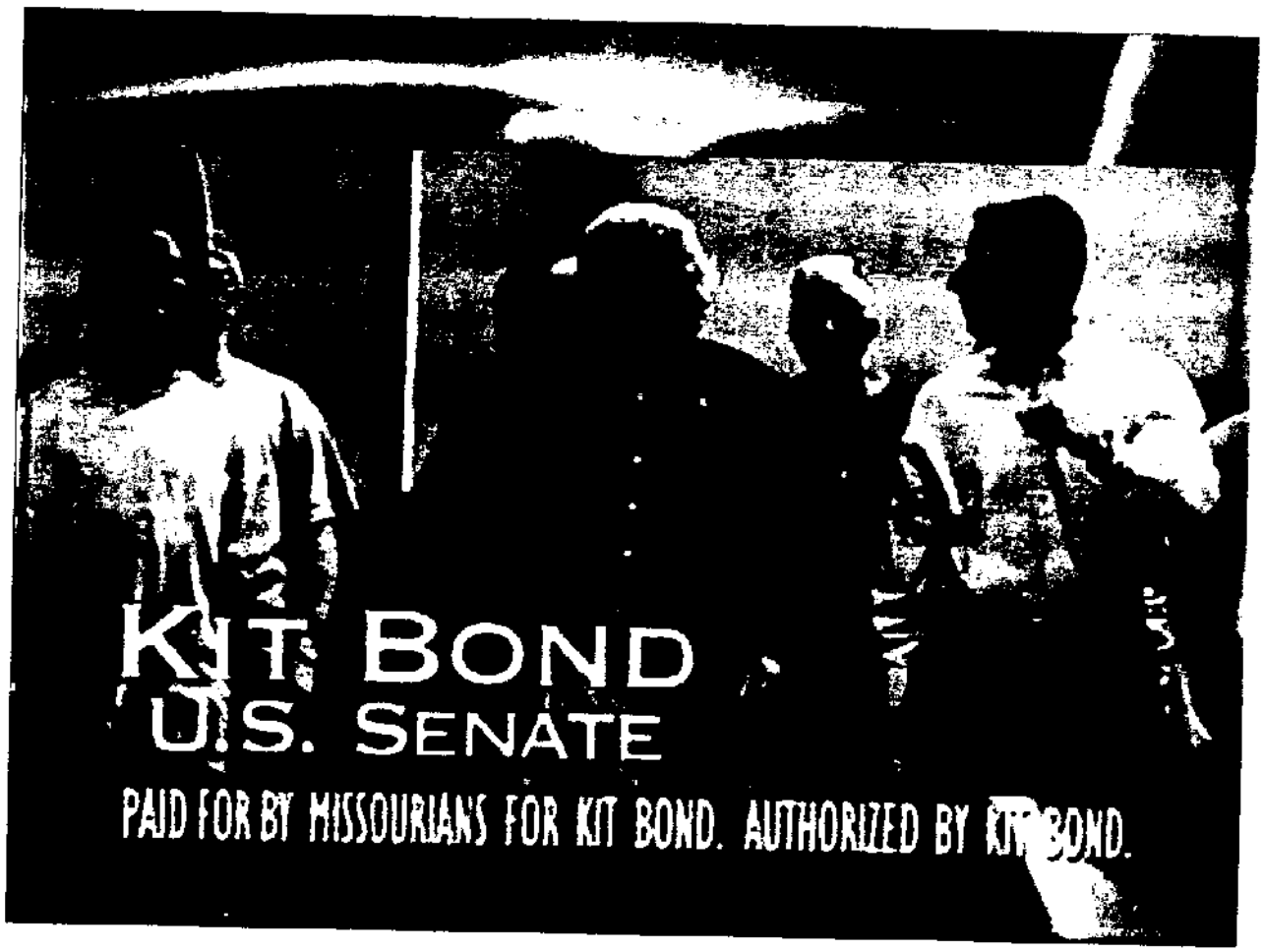
(5) an explanation of the station's sales practices, if any, that are based on audience delivery, with the stipulation that candidates will be able to purchase this kind of time, if available to commercial advertisers.

(c) Once disclosure is made, stations shall negotiate in good faith to actually sell time to candidates in accordance with the disclosure.

(d) This rule (§73.1942) shall not apply to any station licensed for noncommercial operation.

Historical Note
Section added by order in Docket No. 91-168, effective January 4, 1992, 57 FR 189. For Report see 70 RR 2d 239.
Section (formerly "**Lowest unit charge**") retitled, subdivision (a)(1)(vii) deleted and designated Reserved, and (a)(1)(i), (a)(1)(xii), (a)(2) and (b) amended by order in Docket No. 91-168, effective July 22, 1992, 57 FR 27705. For Memorandum Opinion see 70 RR 2d 1331.

Attachment C



Attachment D

Federal Candidate Certification

I am a candidate for the federal office listed below. Pursuant to 47 U.S.C. § 315 (b), I hereby certify that neither I nor any of my authorized committees have or will make a direct reference to another candidate for the federal office listed below unless such reference meets the requirements of 47 U.S.C. § 315(b)(2)(C) of the Communications Act as amended by the Bipartisan Campaign Reform Act of 2002.

I certify under penalty of perjury that this certification is accurate as of the date hereof.

Christopher "Kit" Bond
Candidate Name (Printed)

U.S. Senate
Federal Office

Kyle Roberts
Authorized Campaign Committee (Printed)
(If signing for the Candidate)

Signature

September 6, 2004
Date